

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653(KRH)
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.
CIRCUIT CITY STORES . 701 East Broad Street
INC., . Richmond, VA 23219
.
.
Debtor. . January 16, 2009
. 11:00 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: In the matter of Circuit City Stores,
2 Incorporated. Case Number 08-35653. Hearing on Items one
3 through 32 as set out on today's amended agenda.

4 MR. FOLEY: Good morning, Your Honor.

5 THE COURT: Good morning, Mr. Foley.

6 MR. FOLEY: Doug Foley with McGuireWoods on behalf of
7 Circuit City. With me at counsel table is Gregg Galardi from
8 Skadden Arps. Your Honor, we're here on the agenda that we
9 filed this morning. We thank the Court for allowing us to
10 start at 11 rather than ten. As I explained to chambers
11 earlier this morning, there's been a lot of work over the last
12 several days in New York and a lot of the constituencies needed
13 time to get down here, so we appreciate the Court for
14 accommodating the schedule change.

15 Your Honor, the agenda that we filed this morning, we
16 would propose to go through that, the first six items are
17 matters that have been resolved and I'll briefly go through
18 those and then matters seven through 13 are either matters that
19 have been adjourned by agreement to a future hearing date or
20 are otherwise resolved. And then matters 14 through 21 are
21 uncontested matters. And then the contested matters,
22 potentially contested matters are Items 22 through 32.

23 THE COURT: Very good, Mr. Foley.

24 MR. FOLEY: Your Honor, the first matter is the
25 complaint for declaratory judgment regarding a constructive

1 trust by Greystone Data Systems. Your Honor is aware we filed
2 a Rule 12(b)(6) motion with respect to that adversary
3 proceeding and complaint. We've agreed with counsel for the
4 plaintiff to have a briefing schedule that would run 15 days
5 from today to file a responsive pleading and then a ten-day
6 period to file a reply pleading and then have a hearing on that
7 Rule 12(b)(6) motion on the February 13th hearing docket. So
8 that would put the response date of February 2nd, and then a
9 reply brief date of February 12th with a hearing on February
10 13th. I believe counsel for Greystone is here.

11 THE COURT: All right.

12 MR. DESIDERIO: Good morning. Chris Desiderio from
13 Nixon Peabody on behalf of Greystone Data Systems. What
14 counsel's represented, we've agreed to and that briefing
15 schedule is acceptable.

16 THE COURT: All right. It's satisfactory to the
17 Court, so that will be fine.

18 MR. DESIDERIO: Thank you.

19 THE COURT: It's approved.

20 MR. FOLEY: Thank, Your Honor. With respect to Item
21 Number 2, Your Honor, this is a motion under 365(d)(3) and
22 503(b) by Pratt Center Valley and Valley Corner Shopping
23 Center. That has been resolved and can be removed from the
24 docket.

25 MS. HUDSON: Your Honor, Lisa Hudson here for Pratt

1 Center and Valley Corners. And Mr. Foley's representation is
2 correct. We believe the forthcoming order will adequately
3 resolve our concerns.

4 THE COURT: Very good. Thank you.

5 MS. HUDSON: Thank, Your Honor.

6 MR. FOLEY: Item Number 3 on the docket is a motion
7 for filing a certain document under seal by Alliance
8 Entertainment and we have consented to an order in that regard
9 and I believe it has been submitted to chambers.

10 THE COURT: That will be granted.

11 MR. FOLEY: Thank you, Your Honor. Item Number 4,
12 this is a motion under 365(d)(3) and 503(b) filed by Acadia
13 Realty, Limited Partnership. This one has also been resolved,
14 Your Honor and can be removed from the docket.

15 THE COURT: It will be removed.

16 MR. FOLEY: Your Honor, Number 5 is the motion to
17 compel payment of the administrative post-petition rent by
18 Madison Waldorf, LLC. Your Honor, this matter has also been
19 resolved.

20 MR. WEITZMAN: Mitchell Weitzman, counsel for Madison
21 Waldorf, LLC. It's resolved. This landlord stipulates that
22 the Court's prior rulings with respect to stub rent would be
23 applicable to this motion with the reservation that we can seek
24 reconsideration along with the other landlords, and we have
25 joined in that motion for reconsideration.

1 THE COURT: All right. Thank you, sir.

2 MR. FOLEY: Thank, Your Honor. Item Number 6 is
3 motion by Port Authority Holdings III, Ltd., for an order also
4 under 365(d(3) and 503(b). This matter's also been resolved
5 and can be removed from the docket.

6 THE COURT: All right.

7 MR. FOLEY: Your Honor, Item Number 7 is a motion
8 from relief of stay filed by Mansfield SEQ 287WLTD. And we
9 have agreed with opposing counsel to adjourn this matter,
10 preliminary hearing on this matter to the January 29th hearing
11 date.

12 MS. HUDSON: Your Honor, Lisa Hudson of Sands
13 Anderson here on behalf of Mansfield SEQ287 and WLTD, and Mr.
14 Foley's presentation is correct. We've agreed to adjourn this
15 to January 29th at ten.

16 THE COURT: All right, so it will be heard on the
17 29th.

18 MS. HUDSON: Yes, Your Honor.

19 MR. FOLEY: Thank, Your Honor. Item Number 8 is
20 Navarre Distribution Services motion for adequate protection.
21 Your Honor, this matter we have agreed with opposing counsel to
22 adjourn to the February 13th omnibus hearing date.

23 THE COURT: It will be continued to the 13th.

24 MR. FOLEY: Thank, Your Honor. Matter Number 9, Your
25 Honor, is the motion by Motorola for allowance and payment of

1 administrative expense claim under 503(b)(9) and we have agreed
2 with opposing counsel to adjourn this matter to the January
3 29th hearing date.

4 THE COURT: It will be continued to the 29th.

5 MR. FOLEY: Thank, Your Honor. Item Number 12, Your
6 Honor, is our continued motion to establish notice hearing and
7 sell down procedures for trading and equity securities and
8 claims against the debtor's estates. In consultation with the
9 Committee, we have agreed to adjourn that motion until the
10 January 29th hearing date.

11 THE COURT: That's Item Number 12?

12 MR. FOLEY: Yes, Your Honor.

13 THE COURT: What did we do with Item Number 11?

14 MR. FOLEY: I apologize for skipping that one, Your
15 Honor. That one is --

16 THE COURT: You're just trying to make sure I'm
17 awake.

18 MR. FOLEY: No, I skipped over it. Your Honor, this
19 is our motion to assume and assign a lease to Maryland
20 Acquisition Corp. ACDI, American Computer Development Inc.,
21 filed a response. We're trying to see if we can resolve that,
22 so we've also agreed to adjourn that motion until the January
23 29th hearing date.

24 THE COURT: Okay. And Number 10?

25 MR. FOLEY: Your Honor, that one is also a motion for

1 payment of administrative claim under 503(b)(9) by General
2 Instruments Corporation doing business as Home and Networks
3 Mobility Business. We have also agreed with opposing counsel
4 to adjourn that matter to the January 29th hearing date.

5 THE COURT: All right. All right, then we're back up
6 to Number 13.

7 MR. FOLEY: Back up to Number 13, Your Honor. If you
8 recall at the last hearing Your Honor entered an order, a
9 stipulated order that we agreed to with the Committee with
10 respect to certain taxing jurisdictions as to whether or not we
11 had authority under the first day order to pay pre-petition
12 taxes as trust funds. Your Honor entered an order, made
13 certain findings with respect to those jurisdictions, required
14 us to serve them, which we did. The certificate of service is
15 listed on the agenda. We have received no objections by any of
16 those taxing authorities and jurisdictions to Your Honor's
17 stipulated order. So there's nothing really to do other to
18 announce that that order is now final with respect to those
19 parties.

20 THE COURT: All right.

21 MR. FOLEY: Your Honor, Items 14 and 15 are the
22 Committee's employment papers. I'll have Mr. Pomerantz address
23 the Court on that.

24 MR. POMERANTZ: Thank you, Your Honor. Jeff
25 Pomerantz of Pachulski, Stang, Zeil and Jones on behalf of the

1 Committee. Item Number 14 is the Committee's application to
2 employ my firm as general bankruptcy counsel. We have not
3 received any opposition and an order has been BOP'd.

4 THE COURT: That employment will be approved.

5 MR. POMERANTZ: Thank, Your Honor.

6 MR. FOLEY: And Number 15 is the application of the
7 Committee to employ Tabner and Baron as local counsel, and no
8 objections have been made to that application, and that order
9 has also been BOP'd.

10 THE COURT: And that employment will also be
11 approved.

12 MR. FOLEY: Your Honor, I think that brings us to
13 Item Number 16 on the agenda and 17, which go together. This
14 is a motion to approve a settlement between Verizon Wireless
15 and the debtors, the result of which is to essentially net out
16 and set off certain commissions, charge back, service fees, and
17 the net result of all of the setoffs is that payment coming to
18 the estate of \$1,858,084.76. We have not received any
19 opposition to the motion. We've asked the Court to approve it.

20 THE COURT: Does any party wish to be heard in
21 connection with the motion for the approval of the settlement
22 agreement with Verizon?

23 MS. KELBON: Good morning, Your Honor. Regina Stango
24 Kelbon, Blank Rome on behalf of Verizon Wireless. I wanted to
25 start off by thanking Your Honor for times in the past which

1 you've allowed me to participate telephonically. It was very
2 courteous of Your Honor. But I'm glad I can finally get to
3 meet Your Honor face to face. I really have nothing further to
4 add, but that we've worked very cooperatively with the debtors
5 in reaching a resolution of our issues that are set forth in
6 the stipulation.

7 THE COURT: All right.

8 MS. KELBON: Thank, Your Honor.

9 THE COURT: Thank you very much. And the Court will
10 approve the stipulation and approve the settlement.

11 MR. FOLEY: Thank, Your Honor. That brings us to
12 Items Number 18 and 19, which is a similar motion that we were
13 seeking relief with respect to IBM. Your Honor, in
14 consultation with the Committee who filed an informal response
15 -- the agenda is incorrect, it should say informal response by
16 the Committee since this is our motion -- we have agreed to
17 adjourn this matter until the January 29th hearing date to see
18 if we can resolve the Committee's response to that motion.

19 THE COURT: All right. It will be continued to the
20 29th. Is that both 18 and 19, Mr. Foley?

21 MR. FOLEY: Well, 18 was decided for an expedited
22 hearing, so we would ask the Court to technically grant that
23 and then have the substantive hearing on Number 19 be heard on
24 the 29th.

25 THE COURT: That makes more sense. So the Court will

1 grant the motion for the expedited hearing in Number 18 and
2 then we'll set the hearing for the 29th of January.

3 MR. FOLEY: Thank, Your Honor. Your Honor, that
4 brings us to Items Number 20 and 21, which are items related to
5 a substantive motion that will be argued later in the agenda.
6 This is an expedited hearing request and a motion to seal a
7 certain document by TomTom. And we have no opposition to
8 either of the motions and we would ask the Court to grant them.

9 THE COURT: All right.

10 MR. DESIDERIO: Chris Desiderio from Nixon Peabody on
11 behalf of TomTom Inc.

12 THE COURT: Could you just state your name? I'm
13 worried that we didn't get it on the record.

14 MR. DESIDERIO: Sure, yes. Chris Desiderio.

15 THE COURT: Thank you.

16 MR. DESIDERIO: From Nixon Peabody. There have been
17 no oppositions received, we just seek to seal the exhibits the
18 debtor's filed.

19 THE COURT: So the request in Item Number 20 is for
20 the motion to seal the exhibit and the Court will grant that.
21 And in 21, that's to seal the other exhibits?

22 MR. DESIDERIO: No, actually one was just to grant an
23 expedited hearing. We've noticed this on Wednesday, so it's
24 only being heard on three days, I think three days notice.

25 THE COURT: I understand, okay. So the expedited

1 hearing is granted and the Court will grant the relief to place
2 the exhibit under seal.

3 MR. DESIDERIO: Thank you, Your Honor.

4 MR. FOLEY: Okay, that brings us to Item Number 22 on
5 the agenda. If Your Honor recalls at the last hearing, Your
6 Honor heard a motion to reject certain executory contracts with
7 employees. Some of the parties received late notice and Your
8 Honor gave them additional time to file oppositions. There
9 were three filed, one by Mr. Stacia and one by Mr. Riches and
10 one by Ms. Cohen. And I believe their counsel are here, Your
11 Honor. There was one gentleman, Patrick Longgood that Mr. Shai
12 represented. I spoke to him and concluded that he did not, he
13 decided not to file anything, but he appreciated the Court
14 giving him additional time to do so.

15 THE COURT: All right, thank you, Mr. Foley.

16 MR. RENNIE: Frank Rennie from CowanGates Law Firm
17 here in Richmond. Good to see you, Your Honor. I'm here on
18 behalf of Mr. James Stacia who has filed an objection to
19 Circuit City's motion to reject his separation agreement and
20 release of claims that he filed that he signed with Circuit
21 City in September of 2008. A long term employee, Your Honor,
22 similar to the situations that you heard in last month's
23 hearing. Sixteen-year employee, had received notice in early
24 September that he was going to be laid off. He signed a
25 separation agreement and release of claims, and in return

1 received a six-month severance package. He had one of those
2 months of the six-month severance paid and he would like to
3 enforce the remaining five months of that severance package.

4 Your Honor, unlike some of the severance packages for
5 long term employees, this is one where I believe that there was
6 some quid pro quo in signing the release with Circuit City.
7 Mr. Stacia gave up rights to potentially file any claims that
8 he may have against Circuit City for discrimination under the
9 veterans' statutes. He's a member of the reserve component of
10 the United States military, served in Iraq for a year, came
11 back, resumed his employment with Circuit City, but still
12 maintained a reserve status and was gone for weeks at a time
13 fulfilling that reserve status. So when his employment was
14 terminated and he signed a release, he was giving up the right
15 to file anything that he may want to file claiming that Circuit
16 City discriminated against him as a member of the reserve
17 forces of the U.S. military.

18 So, Your Honor, under the Countryman test that was
19 brought to the Court's attention during the last hearing, we
20 feel like Mr. Stacia had performed his part of the bargain and
21 had completed his part of the contract by signing that release
22 in September, and the only party then to perform under the
23 contract was Circuit City, and they performed one out of six
24 months of his severance package. And we would, for that
25 reason, say that the contract was not executory and that he had

1 fulfilled his part of the contract and would like for the Court
2 to reject that.

3 THE COURT: All right. If it's not an executory
4 contract, doesn't that just make him a creditor of the estate?
5 And then he would have a right to be able to file a claim
6 against this estate.

7 MR. RENNIE: Yes, Your Honor.

8 THE COURT: I mean, you're either one or the other.
9 Either you're a party to an executory contract or if there's
10 been performance, then you're a creditor. And so I think that
11 Mr. Stacia certainly can file claims and if he has entered into
12 a release, you may very well have arguments that if there's
13 been a brief by the debtor, that would allow him to assert the
14 claims and then the debtor can defend against it as the debtor
15 sees fit, obviously. So I would certainly encourage Mr. Stacia
16 to file his claim in the court, but if it's not an executory
17 contract, then he would be a creditor. So in either event he
18 gets to assert his claims in this case. Mr. Foley, do you wish
19 to be heard?

20 MR. FOLEY: The arguments made by Mr. Stacia are very
21 similar to Mr. Wimmer and Mr. Leopold last time. In fact, the
22 pleading is very similar. And as Your Honor ruled last time
23 with respect to Mr. Miller's argument, this is an executory
24 contract and it should be, we're seeking to reject it and the
25 effective 365(g)(1) and 502(g)(1) is it's a pre-petition claim.

1 We're obviously not seeking to have our cake and eat it too,
2 we're not seeking to enforce any release. Whatever claims he
3 has, he has. Whatever priority he wants to assert to have he
4 can assert them and we'll defend them in due course. But all
5 the employees of this company have gone through a lot of
6 problems and they're not over yet, and so we just, we can't
7 treat people dissimilarly, so we think, Your Honor, that with
8 respect to Mr. Stacia's contracts, you should grant our motion
9 to reject them.

10 THE COURT: Thank you, Mr. Foley. Mr. Rennie, I am
11 going to find that this is an executory contract, I am going to
12 allow the debtor to reject the contract. Of course, that just
13 gives rise to a breach and Mr. Stacia can file whatever claims
14 that he wants, and whatever level of priority that you deem
15 appropriate under the bankruptcy code and then we'll hear those
16 matters at a separate time. I am sympathetic to all of the
17 employees of this company, but I think that Mr. Foley makes the
18 good point that everyone needs to be treated the same. Thank
19 you.

20 MR. RENNIE: Yes, Your Honor. Thank you for your
21 time, sir.

22 MR. FOLEY: Your Honor, the next respondent was Mr.
23 Jonathan Riches. I don't know if, I believe he's incarcerated
24 so I don't know if he's represented or his -- but I'm not
25 exactly sure, I believe his claim in his handwritten letter

1 says that if he objects to a settlement offer, he's a former
2 Circuit City employee of 2002 before he went to federal prison
3 for computer fraud he worked in the electronics department and
4 is vested in 401K plan and bought stock options and he says
5 some issues about his pension. I'm not sure this is really, I
6 guess our motion was seeking to reject employment agreements,
7 not seeking to affect his rights under a 401K plan or whether
8 stock options have any value, whether his pension is being
9 affected at all. None of that's being affected, so we would
10 ask the Court to grant a motion with respect to the contract
11 rejection aspect of the relief sought and he could reserve all
12 rights with respect to claims or anything else with respect to
13 the claim.

14 THE COURT: The contract rejection aspect of the
15 claim will be granted and the contract will be deemed rejected.

16 MR. FOLEY: Your Honor, I believe that leaves the
17 last respondent as Savitri Cohen, and I don't know if counsel
18 is here for --

19 THE COURT: I think Mr. Mueller's here on behalf of
20 Ms. Cohen.

21 MR. MUELLER: Good morning, Your Honor. Michael
22 Mueller as local counsel for Mr. Cohen. Mr. Cohen's counsel in
23 New York has asked me to tell you that they submit their
24 objection and offer their papers to the Court. I have no
25 argument, Your Honor.

1 THE COURT: All right. Thank you, Mr. Mueller. The
2 Court will approve the rejection of this contract as well
3 reserving the right of Mr. Cohen to file any claims in whatever
4 priority he deems appropriate with the Court.

5 MR. FOLEY: Thank, Your Honor. That brings us to
6 Item Number 23 on the agenda which is TomTom's motion for
7 relief from the automatic stay.

8 THE COURT: All right, thank you.

9 MR. DREBSKY: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. DREBSKY: Dennis Drebsky from Nixon Peabody on
12 behalf of TomTom. This motion, the facts surrounding this
13 motion are really not in dispute. The legal result of those
14 facts are what we're here for this morning. There is no
15 dispute that there was a letter agreement on October 17th for
16 the purchase of units, 125,000 TomTom units Model 125 which
17 gave rise to a claim of somewhat over \$8.4 million. Along with
18 that was a promotion to Circuit City that if they sold, for
19 every unit they sold they would get a certain number of dollars
20 back, it was Christmas type promotions that you see. And
21 assuming, and we're assuming for the purposes of this motion
22 that they sold all the 125,000 units, this would give them a
23 credit of approximately \$5.4 million. What we're seeking here
24 this morning is the right to set off the \$5.4 million credit
25 against the \$8.4 million liability.

1 The two basic arguments, and I'll get to it in a
2 moment, are, it's either an appropriate set off or recoupment.
3 I'll take the second of those first. In one aspect of it, I
4 would only accept my colleague's argument. Their view of this
5 transaction is that they're two separate contracts and
6 therefore you can't have recoupment. Our view is under either
7 test, this is an integrated contract. In fact, the letter
8 agreement, which is attached both to our papers and to Circuit
9 City's papers, in the purchase order, makes reference to the
10 promotion, and it says, you get the sell through credit program
11 and it says it's separately documented.

12 Clearly at the time, this was an integrated
13 transaction. You buy the stuff, whatever you sell you get X
14 dollars back. And under the Grady test, we became obligated,
15 and I know something about Grady having argued that, under the
16 Grady test, once you become obligated, that's the real point,
17 the fact that Mrs. Grady manifested her illness sometime after
18 the petition didn't make that a post-petition obligation over
19 the A.H. Robins Company. This was, you know, fully integrated
20 to buy and to sell.

21 Interestingly, because in Paragraph 37, Circuit City
22 says they're two separate agreements. Well, if they are two
23 separate agreements, then quite frankly, they don't get any
24 (indiscernible) of credit because they never signed the
25 promotion agreement. And that was a term, that's why it was a

1 separate document. You say I agree to sell these units and get
2 it back. So if they're two separate agreements, then frankly
3 I'm arguing against the pecuniary interest of TomTom, but
4 TomTom has always viewed with all of its vendors as this was an
5 integrated thing. It's done very Christmas, done every, you
6 know, at various times of the year. As such, we clearly have
7 the right to recoupment.

8 Again, two separate agreements, they owe us \$8
9 million, we don't owe them anything. But we're not taking that
10 view frankly, because that's not the way we've ever viewed it,
11 we're not seeking to take advantage of that today.

12 Alternatively, the setoff argument, the pre-petition
13 obligations, they clearly signed the agreement prior, we were
14 to the extent, and we'll assume just for the moment, for the
15 sake of argument that the promotional agreement was also in
16 effect pre-petition. The fact that there was a condition
17 subsequent that they had to sell the units in order to, doesn't
18 make it a post-petition obligation, it just doesn't do it. I
19 mean, and the cases cited herein in our papers clearly show
20 that and the test of this circuit, as well as several others
21 are in agreement.

22 The kind of smokescreen, I'll just, I'm not going to
23 repeat every argument I put in my papers, I'm sure there are
24 other matters that are on today, is this 502 argument that
25 there might be a preference out there, we don't know, we

1 haven't -- so you can't grant any relief. If that were the law
2 that the mere allegation, not even put into papers so that it
3 would be Rule 11 is enough, it would eviscerate the setoff
4 provisions of 553, because traditionally, you don't know when
5 there's going to be an allegation of a preference. It can be
6 at the end of the case, five years later, three years later in
7 the case. You've got to have a lot more, and that's what the
8 case is, it should be a declaratory judgment by the Court or a
9 finding of the Court that there is preference liability here.
10 And that's what, that's in fact what Colliers, the very section
11 cited Circuit City says. Because otherwise, it's so open to
12 abuse, you know, that there would never be a setoff right.

13 I know that, just to sum up, in the course of
14 recoupment doesn't need this Court's permission, there is no
15 automatic stay for recoupment, but we don't want to take any
16 actions here that could deem later to be violative of anything.
17 We think we have both setoff rights and recoupment rights and
18 that an appropriate order should be granted to that effect.

19 THE COURT: Thank you very much.

20 MR. GALARDI: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. GALARDI: For the record, Gregg Galardi on behalf
23 of the Circuit City debtors. Your Honor, I'd like to start in
24 response at the end. First, if it is a recoupment, as I think
25 the gentleman just mentioned, he does not need an order. If he

1 thinks it's recoupment, he doesn't have to come into the Court
2 and get an order. And frankly, on a preliminary motion for a
3 lift stay, where I will list some disputed or questionable
4 facts, it's not appropriate to get a comfort order on a
5 recoupment.

6 So I think Your Honor first has to determine whether
7 our argument is that there is not a valid setoff is correct,
8 because if there is a valid setoff, then he's entitled to lift
9 stay. Your Honor, he starts with the assumption that they
10 sold all goods. We don't know if we sold all goods. He starts
11 with the assumption that he has an allowed claim for the
12 amount. We don't know whether he has an allowed claim to be
13 setoff or a claim to setoff. That's another factual issue
14 based on that assumption.

15 So, Your Honor, and he starts with the fact that it's
16 a pre-petition contract that only earns value on a post-
17 petition basis. So it's clear that the earning of whatever it
18 is to setoff was a post-petition event on a pre-petition. So I
19 don't think it is a setoff, it's a pre-petition contract with a
20 post-petition event, we think it's a claim. Maybe it's a valid
21 claim, who knows what claim, but it's not a setoff at all.
22 That's why we argued recoupment. If it's recoupment, he
23 doesn't need an order.

24 Now we go back to the other arguments that we made,
25 Your Honor. What we have though is we also have an executory

1 contract under his interpretation. His interpretation is that
2 a pre-petition contract that gave us post-petition rights which
3 on the petition date were there for an executory contract. So
4 there is the procedural problem that we think we have in the
5 first instance, but there is no motion. Three-sixty-five with
6 respect to executory contracts applies in the first instance
7 and we have cited Your Honor the case law that the appropriate
8 vehicle to proceed on this matter is first to proceed with a
9 motion to assume or reject the contract. It's been neither
10 assumed nor rejected nor has even moved to assume or reject.

11 If the contract is rejected, then there will be a
12 damage claim and we can talk about what the valid amount of
13 that damage claim. If the contract is assumed, then he may
14 have a claim for the credits, or we may have a claim for the
15 rebate. It's simply premature in this procedural history to
16 make that determination.

17 Finally, Your Honor, it's again, a motion to lift
18 stay filed as Your Honor granted 20 and 21 on an expedited
19 basis. They clearly received pre-petition amounts. To set off
20 against a pre-petition claim, you have to have an allowed
21 pre-petition claim. We believe they have preferences. We have
22 not taken the time yet to file a complaint. We have not even
23 taken time to file an objection. But the supreme court has
24 said, and if you look at Section 502(d) that if you file an
25 objection he doesn't have an allowed claim and there's a

1 dispute with respect to Courts and Your Honor will see numerous
2 of these, that if you have an objection and you validly pled
3 it, the claim is neither allowed nor disallowed until such time
4 as the Court rules on that preference.

5 So, Your Honor, it seems first, premature to go
6 forward on this matter. Two, there is evidentiary issues.
7 Three, if he's very comfortable with his recoupment, he needs
8 no order. And the Court should not enter an abundance of
9 caution order that could prejudice our rights on the money.
10 And four, Your Honor, we think we would be deprived because
11 you're essentially saying there's an allowed claim on an
12 assumed amount that could be recouped for all time, and that
13 can have prejudicial effects on our 503(d) argument. So we
14 would at least say, Your Honor, that there is no basis on this
15 preliminary transcript to grant the relief. If they want to
16 schedule it for an evidentiary hearing on the lift stay, we're
17 prepared to do that. But in any event, we think on a
18 procedural matter, the proper course for him to proceed on is
19 to seek to assume or reject the contract, because I don't think
20 the facts, even as he set them forth, show anything other than
21 this was an executory contract on the petition date. Thank
22 you.

23 THE COURT: Thank you, Mr. Galardi. Mr. Drebsky, do
24 you wish to reply?

25 MR. DREBSKY: Yes, just briefly. First, as to the

1 amount we'll call the give give --

2 THE COURT: Why isn't this an executory contract?

3 MR. DREBSKY: Because it's been fully performed.

4 THE COURT: But there's still performance that may or
5 may not be going on now as they still sell your units if they
6 have not all been sold.

7 MR. DREBSKY: We've given them, no, the 5.4 is the
8 maximum. We've assumed that, we've given them credit for every
9 unit. We've assumed that the --

10 THE COURT: You've assumed that the contract's been
11 fully performed, but the debtor could be still performing.

12 MR. DREBSKY: If the debtor hasn't sold the units,
13 then the 5.4 would be less than -- we've given them that
14 assumption. That's it. You know, we assume that during the
15 Christmastime you've sold 125,000 units. So they're getting
16 the full benefit, assuming that there is a give-give here, of
17 the give-give program. What we're seeking is that we have the
18 right to setoff, the 8.4 which is a contract amount.

19 THE COURT: Right.

20 MR. DREBSKY: Against that under either theory that
21 we've put forward. There's no, you know, this is smoke and
22 mirrors to delay. We want to make sure that they don't get a
23 windfall here. We want, we have fully performed this
24 agreement, we shipped the goods, we've given them full credit
25 for the give-give program. This is an accounting, that's all,

1 we're not talking, no party has to do anything that changed
2 money here. That's all. And that's not an executory contract.
3 It's just the payment of money, or the reconciling, if you
4 will, of debts against credits. I mean, accounting 101, that's
5 all that's left and that doesn't make it executory.

6 THE COURT: All right. Thank you. The Court's
7 going to set this down for a final hearing. I do think we need
8 to have evidence on a number of these points, and I'll set the
9 final hearing for the, February 13th is one of our omnibus
10 dates? We'll set it down for February 13 and I'll hear
11 evidence on this at that time and make a ruling on that day.

12 MR. DREBSKY: Okay. And I guess what we'll try to do
13 before them is stipulate to the facts that we can stipulate to
14 so --

15 THE COURT: Obviously as many facts as you can
16 stipulate to, the Court would welcome that.

17 MR. DREBSKY: Yes, because I think 90 percent of, at
18 least, we can stipulate to.

19 THE COURT: Very good. Thank you, Mr. Drebsky.

20 MR. DREBSKY: Thank you very much.

21 MR. GALARDI: And, Your Honor, I seem to remember a
22 section of the Bankruptcy Code that the final hearing has to be
23 within 30 days. To the extent that this is not within that 30
24 days, we'll concede an extension.

25 THE COURT: I'm extending the stay.

1 MR. GALARDI: Thank you.

2 MR. DREBSKY: Yes. No problem with that.

3 MR. FOLEY: Your Honor, the next matter on the
4 agenda, I believe, is Number 24, which is the motion to
5 terminate the stay by Engineered Construction.

6 MR. PETCHER: Good morning, Your Honor. Rhett
7 Petcher from Seyfarth Shaw on behalf of Engineered Structures
8 Inc. Your Honor, we're here today with respect to ESI's motion
9 for relief from stay to allow prosecution of the statutory
10 mechanics' liens, foreclosure actions and then subsequent
11 foreclosure on the real property.

12 ESI is a general contractor that provided goods and
13 services to Circuit City in connection with new construction
14 and remodeling at four sites, Store Number 3878 in Brea,
15 California, Store Number 4313 in LaHabra, California, Store
16 Number 3745 in Santa Clarita, and Store Number 3396 in Palm
17 Desert. It's our understanding, Your Honor, that Circuit City
18 is not opposing our motion with respect to the last two stores
19 I listed because they've been closed and the leases have been
20 rejected. It's my understanding that they have indicated they
21 will work with us for a stipulated order which we'll then
22 present to the Court.

23 With that in mind, Your Honor, I'm just going to
24 focus today on the two stores which I'll call the going forward
25 stores, where Circuit City has indicated they at least have not

1 yet decided whether to assume or reject the leases.

2 Your Honor, the liens came about as a result of
3 contracts that were signed to remodel the relevant properties
4 in February of 2008. The premium notices were served on April
5 of 2008 and then as of the petition date, ESI was owed on the
6 Brea property, approximately \$119,000 and on the LaHabra
7 property, approximately \$247,000. ESI filed its claim of lien
8 on the Brea property on November 10th, which is the petition
9 date and would need to foreclose on pursuant to California law
10 by not later than February 6th. With respect to the LaHabra
11 property, the lien was, the claim of lien was filed on November
12 12th.

13 With respect to the timing of those liens, under
14 California code and the Bankruptcy Code, it's California Code
15 Section 3134 and Bankruptcy Code Sections 362 and 546. Those
16 liens relate back to the start of work and so should be treated
17 as perfected despite the fact they were filed post-petition.

18 I think, Your Honor, based on my understanding of
19 Circuit City's objection to our motion that the issue really
20 comes down to whether or not there is cause for relief from the
21 stay with respect to these two properties and whether the
22 balance of prejudice weighs in favor of ESI or Circuit City.
23 We acknowledge, Your Honor, that the burden is initially on ESI
24 as the movant to establish that we have cause from relief from
25 the stay and that the burden then shifts to Circuit City to

1 rebut any finding of cause.

2 Under In re Borage, which is out of the Eastern
3 District of Pennsylvania and as supported by -- I apologize,
4 Your Honor -- as supported by In re Robins of the Fourth
5 Circuit, essentially the duty of the Court is to balance the
6 potential prejudice of the bankruptcy estate versus the
7 hardships that ESI may suffer if the stay is not lifted and
8 grant relief on that basis. This Court has indicated in the
9 In re Robinson case that there are usually about four factors
10 that are considered in this, including whether the issues
11 relating to the action that is stayed are state law versus
12 bankruptcy issues or that modifying the stay will promote
13 judicial economy, whether the bankruptcy case will be disrupted
14 in the event that the stay is not lifted, and then finally
15 whether the estate will be prejudiced as it relates to, as
16 compared to the movant.

17 Your Honor, here I think the balance of harm weighs
18 heavily in favor of ESI. First, Your Honor, as Circuit City
19 has pointed out, there are two separate interests that the lien
20 has been placed on. The first is the fee simple interest of
21 the landlord, which is not subject to the bankruptcy estate,
22 and the second is the lease hold interest of Circuit City with
23 respect to its interest, its own interest in the property. We
24 acknowledge that that's a property right that they have in
25 these properties. And the problem, Your Honor, is that the

1 stay doesn't apply as to the running of the statute of
2 limitations for the fee simple interest of the landlords. And
3 so ESI is forced to move forward with respect to any
4 foreclosure proceeding despite the fact that it is not allowed
5 to do so with respect to the lease hold interest.

6 This is problematic for a couple of reasons, Your
7 Honor. First, Circuit City, first, Your Honor, the uneven
8 application is going to result in, potentially result in ESI
9 forfeiting some of the value of this lien because it's moving
10 forward on a foreclosure on a partial basis, and under
11 California law that could be problematic in that it could
12 forfeit the remaining value of its lien to the extent that it
13 doesn't move forward and foreclose on all of the interest at
14 the same time.

15 Second, Your Honor, even if the interest isn't
16 extinguished, Circuit City's interest wasn't extinguished, it
17 would result in piecemeal litigation for ESI, because we would
18 first have to litigate, liquidate, litigate and foreclose upon
19 the fee simple interests and then would have to come back and
20 re-litigate those issues, those identical issues again against
21 Circuit City at a later date. This is going to cause multiple
22 actions on the same issues and is going to result in
23 duplicative litigation.

24 Additionally, Your Honor, ESI will be subject to
25 continued claims of the subcontractors to the extent it's not

1 allowed to continue pursuing these litigations. We've
2 submitted an affidavit that shows that there have been a number
3 of subcontractors who have made claims directly against ESI as
4 opposed to the bankruptcy estate. These are claims that would
5 normally need to be paid out of the monies due to ESI from the
6 estate and the stay has placed ESI in a position where they
7 would, as the claims continue to come in, would need to be
8 paying the bankruptcy estate's obligations out of their own
9 money because the stay is currently in place as to these
10 foreclosure proceedings.

11 Finally, Your Honor, we believe that this could
12 actually result in a net positive for the bankruptcy estate to
13 the extent that these actions are allowed to go forward
14 together, you can see a situation where the landlord satisfies
15 these obligations which would essentially eliminate some of
16 these claims from the need for the estate to ultimately satisfy
17 them.

18 Finally, Your Honor, it's our belief that Circuit
19 City has not yet made any sufficient allegation relating to
20 their own prejudice. They've raised two primary issues. One
21 of them is that the foreclosure actions would harm the
22 negotiations with the owners of the properties as they're
23 negotiating these, renegotiating some of these leases. Your
24 Honor, frankly, they're going to need to, if they're going to
25 assume these leases, they're going to need to sure any liens or

1 any other deficiencies here which means that this is part of
2 those negotiations whether the foreclosure action is proceeding
3 or not.

4 Second, Your Honor, they argue that the lien could
5 hurt their operation of the stores. However, this is an in rem
6 proceeding, it's against the property itself. It wouldn't
7 affect their ability to continue to operate those stores until
8 such relief was granted. Even then there's numerous ways to
9 resolve this that involve non-estate property which could
10 ultimately result in a resolution without affecting their
11 ability to continue operations of these stores.

12 THE COURT: These leases, the debtor has a very short
13 time within which it has to make a decision whether it's going
14 to assume or reject these leases, and that time is fast
15 approaching in this case. If we didn't grant your motion until
16 that time so the debtor had an opportunity to fully analyze its
17 situation, what is the prejudice to you by delaying it for just
18 that period of time?

19 MR. PETCHER: Your Honor, I believe that the
20 prejudice there is the fact that the lease rejection dates
21 happen after the statutory period for foreclosing upon these
22 liens and the prejudice the prejudice then at that point would
23 result from the fact that these liens would expire as to, if we
24 were required to do them piecemeal, in other words, we would
25 have to move forward against the landlord themselves and

1 potentially extinguish the, in that foreclosure proceeding,
2 potentially extinguish our rights to recover against the
3 Circuit City portion of the lien.

4 THE COURT: And if you're stayed by this Court, you
5 would still lose your right under California law to pursue your
6 mechanics' lien?

7 MR. PETCHER: Your Honor, there's some concern about,
8 the concern is the all or nothing approach. There's some --

9 THE COURT: It's the piecemeal aspect of it that
10 you're worried about.

11 MR. PETCHER: It's the piecemeal aspect of it which
12 we're worried about and it's not completely clear, Your Honor,
13 that we would not lose that. There's certainly arguments on
14 both sides there, Your Honor, but we're concerned about that.
15 But we're also concerned about the piecemeal aspect. I mean,
16 the prejudice is also the fact that this litigation would have
17 to happen twice when it could very easily happen once. It's a
18 state law action which is something that again is supposed to
19 weigh in favor of lifting the stay. And based on those, those
20 are the two primary issues that with respect to the prejudice
21 there.

22 THE COURT: And what do you have to do under
23 California law to perfect your lien or to go forward with it as
24 this point? In Virginia we have to file a lawsuit within a
25 certain period of time. Is that what you have to do in

1 California?

2 MR. PETCHER: I believe that is correct, Your Honor,
3 yes.

4 THE COURT: And what if I was to grant you limited
5 relief to allow you to file your lawsuit, but not to pursue it
6 until such time as the debtor makes a decision about whether
7 it's going to assume or reject the contract.

8 MR. PETCHER: Your Honor, to be perfectly honest, I
9 can't answer that question today. I am not sure if just
10 initiating a lawsuit, I believe that the law is the same, but I
11 cannot with certainty state that to you today.

12 THE COURT: All right, thank you. Let me hear from
13 Mr. Galardi.

14 MR. GALARDI: Your Honor, now I'm to the place that I
15 think we were going to suggest, Your Honor. One, we have a
16 hearing, I think it's January 29th. We're concerned about two
17 aspects. One is if there's a foreclosure to be dispossessed
18 and then the landlord also seeking claims against us as an
19 administrative expense where this in our view is a pre-petition
20 expense even it's an obligation under the lease. Two is that
21 we haven't actually had the opportunity to review the lease to
22 see if such a foreclosure action is a grounds to have us taken
23 out of the property. What I was going to suggest, since I
24 understand that there's a February 6th date, was to simply move
25 this over. Again, we would have no problem if all they had to

1 do was file a complaint and stay that action until the decision
2 to assume or reject these leases is determined.

3 THE COURT: That's how we handle it in Virginia.

4 MR. GALARDI: And so we would be perfectly fine with
5 that. And if they had to actually pursue it, I think we could
6 work out something so long as we don't get dispossessed until
7 we make a decision and as long as there's no claims against us
8 or no expenses incurred by us, then I think we can work that
9 through, I think that so as a preliminary matter, what I'd ask
10 is to move it over to the 29th to try to work exactly on that
11 stipulation. No time period would run by that time period.
12 Then we can see if we can do a stipulation where they can file
13 a complaint, familiarize ourselves with what other steps have
14 to do the lease. And I don't think there's any prejudice
15 because the date that seems to be driving this is, again, the
16 February 6th date, and we have a hearing before then.

17 THE COURT: All right. That's what the Court's going
18 to do. I'm going to set it down for a final hearing on the
19 29th of this month and I would encourage counsel to get
20 together and see if you can fashion some limited relief that
21 would allow you not to be prejudice on your claim. That's
22 quite normal in mechanics' lien situations, at least in this
23 state and states around here. We can fashion the same relief
24 under California law. That would be the Court's hope.

25 MR. PETCHER: Your Honor, may I approach?

1 THE COURT: Yes, you may.

2 MR. PETCHER: One other thing, Your Honor, I just
3 want to seek permission from the Court to also, to submit a
4 separate order with respect to the two of the closed stores.
5 The reason for that is there are actual litigation filed
6 against ESI and we'd like to go ahead and get that moving
7 forward more quickly.

8 THE COURT: And that one I understand, there's no
9 objection and the Court will grant that relief.

10 MR. GALARDI: That's correct, Your Honor. We've
11 rejected those leases.

12 MR. PETCHER: Thank you, Your Honor. We'll submit an
13 order.

14 THE COURT: Okay. Ms. Hudson.

15 MS. HUDSON: Your Honor, are we on Number 25?

16 THE COURT: We're just about to be on 25.

17 MS. HUDSON: Okay. Lisa Hudson here on behalf of
18 North Plainfield VF LLC and Marlton VF LLC here on the motion
19 to compel debtor's performance with post-petition obligations
20 under 365(d)(3), another mechanics' lien issue, Your Honor. We
21 filed this motion to compel on behalf of two New Jersey stores,
22 North Plainfield and Marlton, and it involves post-petition
23 obligations that are not limited to rent, rent for December and
24 January, but also a mechanics' liens, to remove those liens
25 that exist and to keep the property free and clear of liens.

1 We're looking at approximately 1.7 million in liens with
2 respect to those two stores in New Jersey, Your Honor, and also
3 the post-petition rents in the amount of \$173,000
4 approximately.

5 As Your Honor may recall, you entered after first --

6 THE COURT: Is this stub rent or is this other kind
7 of rent?

8 MS. HUDSON: This is other rent, Your Honor.

9 THE COURT: Okay.

10 MS. HUDSON: With respect to first day motions, Your
11 Honor entered an order that allowed debtors to satisfy liens to
12 prevent contractors from walking off job and refusing further
13 services and to prevent jeopardizing relationships with
14 landlords. So we have that order in place, and I don't believe
15 from reading Mr. Foley's response, that there are any facts in
16 dispute, but it is going to come down to mechanics lien law in
17 here, New Jersey. So we have Store 4142 at issue and Store
18 4133, and there were approximately a million dollars in
19 mechanics lien leases at the time we filed this motion.

20 Since we filed Schimenti, I believe I'm pronouncing
21 it correctly, on January 8th or 9th also filed theirs for an
22 excess of 600,000. So we're just over 1.7 million now for
23 those two stores. And as I spoke before, we're seeking relief
24 under 365(d)(3) to perform all post-petition obligations under
25 the lease which not be limited just to rent. And where we come

1 into play with all obligations is citing at least the Genex
2 case of the District of Maryland that says things like in
3 enumeration, utilities, CAM, rent, attorneys fees, all of those
4 things are loaded into all post-petition obligations, not just
5 rent. And then --

6 THE COURT: The claim was, the mechanics' lien claim
7 was asserted post-petition, but did the claim arise
8 post-petition?

9 MS. HUDSON: Were it performed pre-petition, Your
10 Honor, filed post-petition and the actual leases at issue here
11 for both of those are identical because they're under the same
12 landlord group and that's another kind of layer here, because
13 Paragraph 13 of those leases say that the landlord and the
14 tenant are going to covenant, that if there are any liens there
15 that they will be removed and that that will be done within 30
16 days after receipt of written notice. So there's another
17 layer, if you will, of analysis here that an obligation arises
18 at the time the debtor's given notice, and those notices all
19 occurred post-petition as well. So --

20 THE COURT: But if I compel the debtor to do this, I
21 would be compelling the debtor to be paying a pre-petition
22 obligation?

23 MS. HUDSON: Well, the facts are a little bit, the
24 facts further enumerate a different result, I think, Your
25 Honor. With respect to the first property in Marlton, there

1 was five liens and then with respect to the second one, there
2 was a Maglio lien and that's since been discharged after we
3 filed the motion by Maglio. And then there was the Schimenti
4 lien that added onto North Plainfield. But debtor's papers say
5 that if they record it post-petition, that that is a violation
6 of the stay and it's void ab initio. Well, we're not going to
7 obviously argue if those liens are void ab initio to the extent
8 that the debtors have no obligation so long as that relief also
9 protects us. The problem here is the one lien, Train, in the
10 Marlton property was pre-petition work and recorded
11 pre-petition, but because I had explained to you that Paragraph
12 13 in the lease says the debtor's obligation arises at the time
13 they get that 30 days notice, that occurred
14 post-petition.

15 So it's our argument that under 365(d), to the extent
16 that any of those liens are not bound to, are not void ab
17 initio by the violation of the automatic stay, namely the
18 Train, that that lease provision is an overlap and that 30-day
19 notice requires that to be characterized as a post-petition
20 obligation and 365(d) would pick up there. So we would like
21 relief for them to be compelled to remove that lien and for us
22 to have an administrative expense claim. And if this Court
23 would not grant that relief, that we would reserve the right to
24 later, in State court remedies and mechanics liens laws under
25 New Jersey contest that and be indemnified for having to remove

1 it.

2 THE COURT: Let me ask you the same question I asked
3 Mr. Petcher that was here just a moment ago and arguing about
4 the California Mechanics' lien laws -- excuse me just a minute.
5 Would all the parties on the phone please set your phones to
6 mute -- I'm sorry, Ms. Hudson. And that question is, why don't
7 we set this over until such time as the debtor is going to have
8 to make their determination whether to assume your lease or
9 reject it, because if they're going to, if they decide to
10 assume the lease, then they're going to be have to, this would
11 be one of the cure components of their obligation to enable
12 them to assume the lease.

13 MS. HUDSON: Well, Your Honor, I guess in one
14 instance, I mean we have the rents of \$173,000 compounding and
15 even post-petition we have more of these liens globbing onto
16 the process. They're enjoying the benefit of the space and
17 time is money and the landlord is prejudiced. But secondly,
18 one of our leases, North Plainfield, is up today later on the
19 agenda in the docket of the Court for rejection. So absolutely
20 up to the point of rejection, if this Court were to enter that
21 order today, hopefully that time line wouldn't be nunc pro tunc
22 or retroactive or anything, we need that relief with respect to
23 that property immediately. For Marlton, arguably, Your Honor,
24 relief as quickly as possible would be acceptable. But for
25 North Plainfield, we have a pending motion to reject.

1 THE COURT: All right, thank you.

2 MS. ELGIE: Good morning, Your Honor. Tara Elgie
3 here on behalf of Schimenti Construction Company. Also on the
4 phone are Peter Strniste and Patrick Birney, motions for
5 appearance pro hac vice have been filed for them. Schimenti
6 has joined in the North Plainfield motion. We did file one of
7 the liens. We would distinguish what the debtor argued with
8 respect to the void ab initio argument for a post-petition
9 liens, because what we did was file the lien against the ground
10 lease and the land only. This does not affect the debtor's
11 property. But we would join in the motion to have the
12 365(d)(3) obligations paid.

13 THE COURT: All right, thank you. Anybody else? All
14 right, Mr. Galardi, you wish to respond?

15 MR. GALARDI: Your Honor, first let me take the
16 construction company's lien. I think it's the same situation
17 that we have just dealt with. If it's only an against the
18 ground lease and it doesn't affect the foreclosure, I have no
19 objection to that. I don't know, and there is case law that
20 says even if you go even against the ground lease, as the
21 gentleman acknowledges, that can be an actual violation of the
22 stay because it could have an effect on our possessory right
23 with respect to the property. So I would suggest that we
24 resolve that one on a separate lift stay at some point when
25 they do it and we reserve all our rights with respect to the

1 construction company.

2 Your Honor, I think it's uncontested, and I think
3 this actually goes back to the billing date and accrual
4 approach, because, and it's complicated by a lien approach.
5 Basically I think all of the work was done pre-petition. The
6 contract says, let's assume the contract says it's due 30 days
7 when the lien arises. But it's still just very much like the
8 taxes that arisen pre-petition or anything else. Under the
9 accrual method, they're trying to squeeze a 365(d)(3) billing
10 date approach to get us to pay these liens. That's not how the
11 law works under the accrual method. If the work was done
12 pre-petition, even if was a payment obligation under this, the
13 accrual method says these are the obligations that arose during
14 that period of time that had to arise after the case.

15 So we would argue that, first, Your Honor, that these
16 bills, as she admits are pre-petition obligations, so even if
17 they come under the timely payment 30 days later or 40 days
18 later, it's only for that which is post-petition, so we would
19 suggest, Your Honor, it's really a cure issue as Your Honor has
20 pointed out.

21 Your Honor, also, again, just because the liens
22 relate back, the only reason the perfection happens is the
23 liens relate back to the post-petition. So again, it's
24 pre-petition claims, but they're being elevated. We don't
25 think it's a 365(d)(3) obligation under the accrual method. I

1 think one even is in the stub rent period. So it's again, goes
2 to the reconsideration motion even if it was perfected and even
3 due, it's probably in that stub rent period as I recall, and we
4 would argue that that's not necessarily payable at this
5 particular time. So, Your Honor, we would ask that Your Honor
6 not grant the motion to have us pay these at this time. That
7 this way of either assumption or rejection under the accrual
8 method and under the, that these are simply pre-petition
9 obligations that the landlord is trying to elevate to a
10 post-petition obligation. But all rights reserved, if it's a
11 post-petition obligation, then it's simply an accrual issue or
12 it's an administrative expense, perhaps, in the stub rent
13 period.

14 THE COURT: Thank you, sir. Ms. Hudson, do you wish
15 to reply?

16 MS. HUDSON: Your Honor, only with respect to a
17 clarification under the lease. It says it better than I could.
18 In Paragraph 13 on this issue of the notice period, it says
19 expressly that should a lien be filed, the party whose
20 nonpayment of the contract or causes the lien to be filed shall
21 within 30 days after receipt of written notice of the lien
22 cause it to be removed. So we admit for the Train lien that it
23 was pre-petition work and it was recorded pre-petition, but
24 that notice, all of it occurred unarguably and undisputedly
25 post-petition and that notice is when the obligation arose by

1 the parties in the contracting language.

2 THE COURT: I understand that. But speak to Mr.
3 Galardi's argument about the accrual method and the way that we
4 do that as opposed to the billing method. I mean, I understand
5 that the obligation said it was to be paid at that particular
6 time. But the debt accrued pre-petition.

7 MS. HUDSON: That's ignoring New Jersey Mechanics
8 Lien Law. All the case law on bankruptcy says you look to the
9 underlying state law, and New Jersey is not a lease like
10 Virginia or Arizona, in New Jersey it's at the time of
11 recording, it's at the time of perfection. When the work is
12 performed is irrelevant. It is not a relation back state.
13 Because New Jersey is different, their Designer Doors case in
14 Arizona is inapposite. Designer Doors is an Arizona/Virginia
15 case that says you do relate back. But New Jersey is not a
16 relate back, it is at the time that that lien is recorded or
17 perfected and filed. It is not at the time that the underlying
18 work was performed.

19 THE COURT: Then it would be a post-petition matter
20 that would be stayed by the automatic stay.

21 MS. HUDSON: Void ab initio. Yes, Your Honor. So it
22 would not be an obligation with respect to the debtors, and
23 we'd like that relief to apply to us as well.

24 THE COURT: Is that what your motion says?

25 MS. HUDSON: Our motion says to the extent that any

1 of these obligations are found to exist, that we would like the
2 debtors to be compelled under 365(d)(3), and then their reply
3 stated argument about the void ab initio under the automatic
4 stay, and we just join in that relief, and to the extent that
5 any are found not void ab initio, just echo our 365(d)(3)
6 argument.

7 THE COURT: All right, thank you.

8 MR. GALARDI: Your Honor, may I just add something?

9 THE COURT: Yes.

10 MR. GALARDI: I'm going to try to -- with respect to,
11 and we've cited a case, with respect to the landlord and us,
12 our argument is essentially it's not a 365(d)(3) timely payment
13 obligation which is why we get treated differently than the
14 landlord. We're not trying to supercede New Jersey lien law.
15 New Jersey lien law applies to, between the two parties behind
16 me, the lien arises against the owner of the property at that
17 time. So I think the stay only applies to us. Obviously third
18 parties don't get the stay, and our argument is essentially,
19 this shows it's not a 365(d)(3) timely payment obligation under
20 the accrual method. And I think that's how we've tried to
21 simplify the analysis.

22 THE COURT: Thank you.

23 MS. HUDSON: Your Honor, I just have one point of
24 follow up. With respect to the question of whether these are
25 all pre-petition obligations, factually I'm not sure with

1 respect to all of the Schimenti claims. However, I would point
2 out that some of the matters at issue are retainage, and that's
3 not property of the estate either, Your Honor. So we would
4 argue that that affects the analysis. Furthermore, I think
5 there was a comment made about the Maglio lien. While that
6 lien was released, it's actually subsequently been re-filed,
7 and that is subsumed within the Schimenti lien.

8 THE COURT: All right. Well, don't I have to analyze
9 your claim in the context of a motion for relief from stay as
10 opposed to a joinder in the debtor's motion to compel payment?

11 MS. HUDSON: Well, Your Honor, you know, we certainly
12 join in the motion, we can bring a subsequent motion for relief
13 from stay if Your Honor thinks that that would allow you to
14 resolve the lien specific issues.

15 THE COURT: Well I'm not telling you how to practice,
16 I'm just saying that I think that the kind of relief that
17 you're asking for is more appropriate in that kind of a
18 context. The motion as I understand that before me is a motion
19 to compel the debtors to perform a specific provision under a
20 lease.

21 MS. HUDSON: And we would join in that, Your Honor.
22 Thank you.

23 THE COURT: Okay, thank you. All right. Any other
24 party wish to be heard? All right, Ms. Hudson, I'm going to
25 deny your motion to compel. I think that for reasons that Mr.

1 Galardi just stated, I don't think that the stay extends to the
2 landlord, it's for the benefit of the debtor. And to the
3 extent that it was a pre-petition obligation, the accrual
4 method would not obligate the debtors to make the payment.

5 MS. HUDSON: Your Honor, can we ask that proposed
6 findings of fact and conclusions of law be prepared?

7 THE COURT: Yes. Mr. Galardi, if you could submit
8 proposed findings of fact and conclusions of law for the
9 Court's consideration. And, Ms. Hudson, you can submit your
10 own as well.

11 MS. HUDSON: Thank, Your Honor.

12 MR. GALARDI: Your Honor, when would you like those,
13 Your Honor? Ten days?

14 THE COURT: Ten days.

15 MR. GALARDI: Thank you.

16 MR. POMERANTZ: Good morning again, Your Honor. Jeff
17 Pomerantz from Pachulski, Stang, Ziehl and Jones on behalf of
18 the Creditors' Committee. Item 26 on Your Honor's agenda is
19 the Creditors' Committee's application to employ Protiviti as
20 financial advisor. At the time that the agenda was prepared
21 there were discussions going on between the debtor and the
22 Committee which have been resolved and we have BOP'd the order
23 on that application.

24 THE COURT: I saw the order there, I was wondering if
25 that had been resolved. So that order will be entered. Do you

1 wish to be heard on that?

2 MR. GALARDI: Your Honor, yes. That's been resolved.
3 I just, when we get to the next financial advisor, one of our
4 concerns was two financial advisors given subsequent events, I
5 just wanted to put that on the record when we get.

6 THE COURT: All right, thank you, sir. All right.
7 So the application to employ Protiviti will be approved.

8 MR. POMERANTZ: Your Honor, Item Number 27 on Your
9 Honor's agenda is the Committee's application to employ
10 Jeffries and Company as the Committee's investment banker and
11 financial advisor. We've had discussions with the debtor with
12 respect to the Committee's retention of Jeffries. I believe in
13 concept the debtor had no opposition to the Committee's
14 retention of Jeffries and we've worked out the compensation
15 arrangements which turned on the application of the transaction
16 fee provided in there, and that has been resolved. I think
17 we've also resolved that the Committee should be authorized to
18 employ Jeffries through the, at least the end of the month, and
19 we have an order that has circulated that would involve the
20 Committee's application being granted, Jeffries being employed
21 through the end of the month on the transaction fee schedule
22 that is contained in that order.

23 Mr. Galardi raised to the Committee several days ago
24 the concern that depending upon the outcome of his case, it may
25 be that Jeffries' employment should not continue beyond a

1 certain period of time and that the Committee should not have
2 two financial advisors. The Committee is very mindful of it's
3 duty to only employ financial advisors and professionals that
4 make sense and to keep costs down and given the uncertainty,
5 though, surrounding the case the last couple of weeks we
6 believe that the best approach was to continue to January 29th
7 solely the issue of the extent to which Jeffries would be
8 continued to be employed after that period of time. The
9 Committee will consider that issue in light of events how
10 they've turned out the last few days. We'll meet and hopefully
11 we'll reach a resolution with the Debtor. If for some reason
12 we can't reach a resolution we would be back here, Your Honor,
13 on January 29th arguing the continued employment which may
14 contain modified terms based upon changed circumstances.

15 THE COURT: All right. Thank you.

16 MR. POMERANTZ: Thank you.

17 THE COURT: Mr. Galardi?

18 MR. GALARDI: Your Honor, Mr. Pomerantz has described
19 the discussion. As yesterday was the sale transaction day and
20 we hope to approve a transaction, we would be attaining the
21 position as with our own financial advisors that investment
22 bankers are probably no longer necessary after the end of the
23 month and that's really the reason I rose both with respect to
24 productivity and Jeffries I think we'll be down to one and we
25 think they should be down to one so to speak by that time.

1 But, let's see how the facts and circumstances go and we've
2 agreed to adjourn that particular issue until the 29th.

3 THE COURT: Thank you, sir. And, so as I understand
4 it then I'm going to approve the employment of January and then
5 we'll consider on the 29th of this month the role of this
6 professional going forward past January?

7 MR. GALARDI: Yes, Your Honor, you'll approve it
8 through January. They were hired immediately after the
9 appointment of the Committee in November, so it would be
10 November through January. Your Honor would also be approving
11 the transaction fee as agreed to by the Debtor and the
12 Committee with the sole issue remaining is the continued
13 employment if, in fact, that is something that Your Honor needs
14 to address that can't be resolved.

15 THE COURT: Thank you. That will be approved.

16 MR. GALARDI: Thank you, Your Honor. Item Number 28
17 on Your Honor's agenda is the Committee's application to employ
18 the law firm of Gowling, Lafleur, Henderson as Canadian
19 counsel. As Your Honor is aware there's a Canadian proceeding
20 pending in Canada and the Committee had believed it necessary
21 to retain counsel. Initially, there was an objection by the
22 Debtor to the Committee's authority and appropriateness of them
23 retaining Canadian counsel. We have since resolved that and
24 that order has been BOP'd to Your Honor.

25 THE COURT: And that will be approved.

1 MR. GALARDI: Thank you, Your Honor. Your Honor, I
2 think we go to the jury box for Number 29 if I'm not mistaken.
3 I think it's the landlord's motion for rehearing and
4 reconsideration.

5 THE COURT: All right. Thank you.

6 MR. EPPS: Good afternoon, Your Honor.

7 THE COURT: Good afternoon, Mr. Epps.

8 MR. EPPS: A.C. Epps, Jr. on behalf of the landlord's
9 who have filed Docket Number 1347, also clients who our firm
10 have joined in docket Numbers 1363 and 1375. There are other
11 landlords represented by other counsel who have also joined,
12 but those are our three items.

13 Your Honor, I appear fairly certain that the Court
14 felt that it had dispensed with me once before on this issue
15 and for that I apologize, but I'm afraid it hasn't and I'd like
16 to explain why we're back in the procedure which we're back in
17 if you don't mind. The Court may recall that we've brought
18 this motion --- these various motions for a payment and they
19 were in front of the Court originally on its docket for the 5th
20 of December which was, in fact, the first Omnibus hearing in
21 this case.

22 UNIDENTIFIED ATTORNEY: Your Honor?

23 MR. EPPS: This --

24 UNIDENTIFIED ATTORNEY: Excuse me.

25 THE COURT: Is there someone on the phone who wishes

1 to speak?

2 UNIDENTIFIED ATTORNEY: I'm sorry. I think that I
3 just -- somebody has obviously put the call on hold and I could
4 not hear the Court through the classical music playing. It
5 just went off.

6 UNIDENTIFIED ATTORNEY: No, it's still on.

7 UNIDENTIFIED ATTORNEY: It is, Your Honor, if you --

8 UNIDENTIFIED ATTORNEY: Could everyone just hang up
9 and call back in so we can lose whoever is not on the phone and
10 we could hear the hearing?

11 THE COURT: I think in light of the circumstances
12 that makes good sense. If everyone would please --

13 UNIDENTIFIED ATTORNEY: And hopefully -- or could you
14 disconnect -- you might have to disconnect that person somehow
15 after we've all hung up and called back in like five minutes.

16 THE COURT: I can do a lot of things, but I don't
17 know if I can disconnect --

18 (Laughter)

19 MR. CLARK: My name is John Clark. I just talked to
20 technical services. They're looking into it and they're going
21 to try and disconnect that person.

22 THE COURT: Okay. Thank you. And then I would ask
23 everyone else to please just be patient and -- until we can get
24 that done and then set your phone to mute. Thank you.

25 UNIDENTIFIED ATTORNEY: Okay.

1 UNIDENTIFIED ATTORNEY: Thank Your Honor

2 UNIDENTIFIED ATTORNEY: Your Honor, would you like to
3 wait for five minutes or should we proceed?

4 UNIDENTIFIED ATTORNEY: It sounds like they got it
5 done.

6 THE COURT: I think that --

7 UNIDENTIFIED ATTORNEY: Your Honor, it appears to
8 have cleared up.

9 THE COURT: All right. Thank you.

10 UNIDENTIFIED ATTORNEY: I was just telling this
11 person who just got back from being on hold you had music
12 playing.

13 MR. EPPS: In any case, Your Honor, we were here on
14 the 5th of December which was the first Omnibus hearing -- the
15 first hearing other than the first day hearings. Discussions
16 with Mr. Galardi on that day resulted in an agreed postponement
17 of the hearing until the 22nd with our treating it as though
18 you were hearing it on the 1st for the promptness question
19 purposes.

20 At the hearing on the 22nd, the Court heard me out.
21 It then decided that it was not going to order the Court to
22 make -- order the Debtors to make the payments that we had
23 requested at that time. The Court's ruling on the record which
24 I will point out in a second was quite sketchy and I had
25 requested that the -- there would be findings and conclusions.

1 Later in the hearing, the Court pointed out to
2 Debtors' counsel that it would like the Debtors' counsel to
3 produce findings and conclusions. That has not happened.
4 There are no findings and conclusions submitted to the Court,
5 at least, as of ten o'clock last night. What there is is a
6 docket entry from a day or so later from, I believe, made by
7 Ms. Fathergill that says that you have denied our motion.

8 Now, personally, I am pretty comfortable that in a
9 Fourth Circuit that doesn't have any effect. Other places in
10 the country that may not be the case and certain of our clients
11 who are very, very nervous about that. And, furthermore, to
12 add confusion to the situation already somewhat confused we
13 inferred correctly or incorrectly from something that was
14 discussed at one point with the Debtor that perhaps the Debtor
15 was going to take that position that our ten days had started
16 to run.

17 THE COURT: For mostly an appeal?

18 MR. EPPS: Yes, sir.

19 THE COURT: That's from the date of the entry of the
20 order --

21 MR. EPPS: That's my understanding, too.

22 THE COURT: -- and I have not entered an order.

23 MR. EPPS: But, we were -- that was my feeling, too.

24 I, certainly, did not want to be tripped up by an interim
25 discussion on the other issue. But, at that point we still had

1 no findings and, indeed, as I say we still have no findings.

2 Now, the case will never get appealed if we never
3 have any findings. We did not know what --

4 THE COURT: Or I could authorize you to submit
5 findings.

6 MR. EPPS: You could, Your Honor, and I would be
7 willing to do that. I don't know whether the Court -- the
8 Court's oral record on this consists of about four lines of the
9 Court's discussion which, I think, is not what either the Court
10 or any of us want to have as our record to go up. And my main
11 purpose to be here is if I cannot persuade the Court that it
12 would -- made a mistake is to have something to take up because
13 it's of particular importance to us and we do need to take it
14 up.

15 THE COURT: I know you want to take it up.

16 MR. EPPS: And while I -- the Court is familiar with
17 me, and knows that I believe in what I argue before the Court,
18 and I really believe this, and I really believe that we should
19 win, and I'm perfectly happy that we argue it today, and
20 although I think our papers say it quite well, what I really
21 need is a record to take it up on.

22 THE COURT: And the Court certainly would welcome
23 guidance from the appellate courts, as well, on this issue.
24 But, you know, I did find that the stub rent requests are going
25 to be accorded priority treatment under Section 503(b)(3) and

1 that the Debtors were not obligated to pay the stub rent
2 immediately pursuant to Section 365(d)(3). That was what I
3 held and I was following Judge Adam's Track Auto (phonetic)
4 case as I read that and, so it's not any mystery that's what
5 I -- the decision that I made and I think that you are entitled
6 to an order that says that so that you can appeal that and go
7 up.

8 Now, Mr. Galardi, maybe you can enlighten us --

9 MR. GALARDI: Sure.

10 THE COURT: -- on where we are on the findings of
11 fact and provings of law.

12 MR. GALARDI: Your Honor, I will take 100 percent
13 responsibility. I put my final comments on it on Monday, got
14 trapped in the auction and did not circulate it. I will have
15 it circulated before the end of today to Mr. Epps. I welcome
16 his comments. I understood he filed it and I do apologize for
17 that fact, but it says exactly what Your Honor just said. No
18 mystery, and we understood and another counsel took an appeal.
19 I understand the uncertainty we were creating and I apologize.

20 MR. EPPS: Mr. Galardi has considerably more that I
21 could ever get done and I certainly am not criticizing on that.
22 I just need this issue to move along, so if the Court would ask
23 that we exchange and try to get a unified findings and
24 conclusions. And if we don't we'll submit our own in the same
25 ten days that you were discussing with other people, is that

1 good?

2 MR. GALARDI: And that is fine, Your Honor. I -- we
3 were, again, no excuse. We could have filed it today, but I
4 though we'd give Mr. Epps an opportunity since he had filed the
5 reconsideration. Part of mine was a little premature since I
6 didn't have an order. I didn't even realize there was another
7 proposed denial. My apologies. He will have it today by five.
8 We will have it submitted with comments or a competing order by
9 Monday.

10 THE COURT: That'll be fine. Monday's a federal
11 holiday --

12 MR. GALARDI: Tuesday.

13 THE COURT: -- so I'm told. I'm still getting used
14 to this, too. But, so by Tuesday I would like the findings
15 filed and then Mr. Epps, you would, certainly, have ten days
16 from that date to file a competing version of the findings and
17 conclusions if you wish to do so.

18 MR. EPPS: Your Honor, I would hope that we would
19 have findings and conclusions would have my signature on them
20 and we'll try to do that.

21 THE COURT: If they have your signature then I'll --

22 MR. EPPS: If we -- if that doesn't happen then I'll
23 take the ten days and I thank you.

24 THE COURT: You're welcome.

25 MR. GALARDI: Yeah, I hope so, as well, Your Honor.

1 THE COURT: All right. And, so for purposes of Item
2 Number 29, it's denied.

3 MR. EPPS: Thank you.

4 MR. GALARDI: Your Honor, that brings us to Matter 30
5 on the agenda which is the Debtors' second Omnibus motion for
6 an order authorizing rejection of certain executory contracts.
7 My understanding is that there are no objections to that
8 motion. We'd ask for an order to be entered on Item Number 30.

9 THE COURT: That will be granted.

10 MR. GALARDI: Your Honor, the next matter on the
11 agenda is the Debtors' second Omnibus objection authorizing the
12 rejection of certain unexpired leases or non-residential real
13 property. There are two objections. One is North Plainfield.
14 Again, I know from the other hearing that this now motion is
15 now up for rejection as opposed to the issue of open
16 assumption.

17 And then there is the objection of Verizon Wireless.
18 I don't know if they have -- if they're opposing the objection
19 or they want to have -- I think Plainfield wanted to have the
20 payment of the contractor's liens. I think that issue has been
21 dealt with and I think Verizon wanted to say something about
22 it's property.

23 THE COURT: All right. Very good.

24 MR. KELBON: Thank you, Mr. Galardi. Your Honor,
25 Regina Kelbon on behalf of Verizon Wireless again. Your Honor,

1 as you know we have kiosks in each of these locations. They're
2 called SWAS, store within a store, and when the Debtor closed
3 down the first 154 stores we worked very cooperatively and we
4 coordinated that exit very well.

5 However, there were like 12 store that were never
6 open, but our kiosks were already placed in there because they
7 were ready to be opened for the grand opening and apparently
8 the Debtor has given the keys back to -- on four of the
9 locations prior to our ability to get the kiosks out. So, we
10 have just requested that the order provide that the landlords
11 make a reasonable opportunity for us to get out -- get our
12 stuff out of their stores. We have contacted the landlords so
13 far. We do not anticipate any problems from them. The ones we
14 have reached out to and have made contact with have been
15 cooperative, but we -- out of an abundance of caution just want
16 to make sure we can get our kiosks and our property out.

17 THE COURT: All right. Thank you.

18 MR. KELBON: Thank you, Your Honor.

19 MS. HUDSON: Your Honor, Lisa Hudson, again, on
20 behalf of North Plainfield VF, LLC. We realize Your Honor has
21 denied our 365(d)(3) and we would just ask that any rejection
22 not be earlier, nunc pro tunc or retroactive then the date of
23 any order from today's hearings and that any post-petition
24 obligations not be relieved in that order up to the time of
25 rejection.

1 THE COURT: The rejection is not going to be nunc pro
2 tunc. Mr. Galardi, you're not asking for nunc pro tunc relief
3 on this?

4 MR. GALARDI: Actually -- well, nunc pro tunc to the
5 date that we have actually surrendered the property, Your
6 Honor. We have given back the keys. We've given possession.
7 She would like it at the order we had done that prior to the
8 filing of the motion my understanding is, so we actually would
9 like the date to be as of the filing of the motion as opposed
10 to the date of the order under the idea -- and we have done
11 this in the first day of the case that we had actually
12 surrendered the premises, turned over the keys. I have no
13 problem with respect to her. To the extent there's a factual
14 issue as to whether we had actually done that and given
15 possession for her to reserve all rights on any administrative
16 claim, but our -- I was just trying to decrease our
17 administrative expenses. If there was a surrender I'd like to
18 have the date of the surrender and we can just say date of
19 surrender with all parties reserving their rights on that date.

20 But, the order is always -- when Your Honor has a
21 hearing as opposed to necessarily when we surrender the
22 premises and we try to get out as soon as we can and surrender
23 the keys.

24 THE COURT: All right. Thank you.

25 MR. GOLD: Good afternoon, Your Honor.

1 THE COURT: Good afternoon.

2 MR. GOLD: Ivan Gold of Allen Matkins for GMS Golden
3 Valley Ranch. We're one of the construction leases that's
4 subject to the motion located in Santa Clarita, California. I
5 just wanted to let the Court know that we started an informal
6 dialogue after this motion was filed because it certainly --
7 the rejection of partially completed store that was sitting
8 vacant was not that controversial apart from the lien issue.
9 And we've been working with the Debtor on consensual language
10 in the order that will reserve all the respective parties'
11 rights with respect to the liens and I think that will solve,
12 you know, any potential problems resulting from the rejection
13 of the leases.

14 It provides that, you know, this doesn't affect any
15 defenses the Debtor or a landlord might have to a third party
16 lien claim. The third party claimants have their rights. As
17 Mr. Galardi says everybody's rights are reserved apart from the
18 fact of rejection of these leases which, at least, returns
19 control they can be -- the properties could be stabilized. So,
20 but I did want Your Honor to know that there had been quite a
21 bit of -- in addition to the filed rejections, quite a bit of
22 give and take and we hope to present an order to you that
23 resolves those issues.

24 THE COURT: Thank you, Mr. Gold. Ms. Hudson, you
25 don't have any problem with the date of surrender being the

1 date for the rejection?

2 MS. HUDSON: No, Your Honor.

3 THE COURT: Okay. Very good, so we will put that in
4 the order then.

5 MR. GOLD: Thank you, Your Honor.

6 MR. GALARDI: Your Honor, I guess that goes to what
7 probably many of the people in the courtroom have waited for
8 which is the motion of the Debtors, Number 32, to sell,
9 substantially, all of their assets.

10 Your Honor, the three main management people, Mr.
11 Marcum, Mr. Hedgebeth and Mr. Besanko are actually back at the
12 company addressing the employees, so I'm going to take -- and
13 many people in the courtroom think I've taken way too much
14 liberty by testifying myself, but I will go through some facts
15 as to how we got here just for the background because I think
16 it is both a very sad and tragic day, actually, in Circuit
17 City's history.

18 Your Honor, before we ever commenced this case Mr.
19 Marcum who had taken over as CEO and the testimony, I think, is
20 in the record in parts had tried to get some support from the
21 vendors going into the Christmas season to get vendor's support
22 taken a trip to Korea and seen vendors. Unfortunately, he was
23 unable to get the vendor's support pre-bankruptcy and we
24 filed -- and I told Your Honor, at the first day which was
25 November 10th that we were trying to build the bridge to a

1 going concern transaction of some sort, that the financing that
2 I emphasized was 30 million for -- we're paying roughly 25
3 million for 50 million of availability to get what, I think, is
4 today the most critical date which was the January 16th
5 hearing. And as we went through this case with respect to the
6 DIP proceedings, Your Honor, we had had objections from the
7 Committee with respect to the DIP that we had resolved.

8 And throughout this process the Debtors and the
9 management team, in particular, have gone through extraordinary
10 efforts to find a going concern transaction. Indeed, we had
11 even a gentleman who had bought, substantially -- I think it's
12 28 percent now, of the stock of the company, Mr. Salinas, who
13 we've been entertaining negotiations with and discussions with
14 since the day he bought -- started to buy that stock,
15 Rothchild, FTI, Scadon (phonetic), have been dealing with their
16 professionals to try to get to a going concern transaction.

17 Your Honor may also recall that on December 22nd we
18 settled the Committee's objection to the proposed DIP financing
19 and, again, modified those dates to say that there had to be in
20 some sense a determination to this case by this day whether we
21 were going to go going concern transaction or whether we were
22 going to end up in a full store liquidation. Your Honor, that
23 motion and the amendment which we then unsealed after filing a
24 sale motion, the amendment to the DIP provided that we would
25 file a motion on January 5th which we did under seal. We

1 unsealed it and that today would be the sale hearing.

2 Your Honor, very importantly and I think it is
3 notwithstanding the efforts of management the company has been
4 pursuing through Rothchild through management a going concern
5 transaction well before the case was commenced, but during the
6 case and even as late as last night had believed that there
7 would be some going concern transaction. I say that this is a
8 somewhat tragic situation because I think it's brought upon by
9 the fact that financing is in this market is extremely
10 difficult. Retail is extremely difficult and vendor
11 uncertainty has created much of a problem.

12 We had gone forward with trying to sell the business
13 as a 500 and roughly 75 store chain. We had put up a
14 permutation for Mr. Salinas and other bidders of a 300 to 350
15 store chain and we put up a permutation for a chain with
16 respect to 180 store in the Northeast. As people who are --
17 many of whom are in the courtroom today attended the auction
18 that was more on-the-record/off-the-record, they could
19 understand that it lasted -- an after consultation with the
20 Committee and the bank we actually began the process, I think,
21 it was Monday or Tuesday and continued that process until after
22 midnight last night in our offices in New York trying to
23 negotiate, essentially, two major transactions.

24 The first was the full store liquidation which is
25 approximately 575 stores, a full store liquidation of the

1 Circuit City chain. And second was one of those permutation
2 transactions which eventually because of the financing markets
3 at best this company could afford a \$600 million facility in
4 these times which then dictated the size of the transaction as
5 I said down to 350 and down to 180.

6 Your Honor, we had Mr. Marcum, Mr. Besanko, there was
7 the consumer electronics meetings in Las Vegas, I guess, it was
8 about two weeks ago. They flew out there. They met vendors.
9 We have letters of support from such vendors, but those letters
10 of support are all dependant upon financing and getting a
11 transaction. We still were running up against that January
12 16th date.

13 Your Honor, what we had said on the first day and I
14 think what has come true is the following. We really need in
15 this consumer market and in this consumer electronics and the
16 retail you really need two things. You need an adequate DIP
17 facility or a facility and you need adequate trade/vendor
18 support. To their credit the banks want to put in money,
19 except to be secure you need trade support. You need consumer
20 credit.

21 To the credit of certain vendors they met with our
22 two buyers and to the credit of our buyers at their own expense
23 no expense reimbursements have been paid. No expense amounts
24 have been paid. They met and they flew both from Mexico to New
25 York to Las Vegas and then Goldgate flew from -- to Las Vegas

1 to meet the vendors. Notwithstanding the support that they say
2 in those meetings, unfortunately, I have -- I'm, unfortunately,
3 have to announce that we had no going concern transaction as I
4 stand here today.

5 Your Honor, we had though no written proposals for a
6 going concern transaction we had hours and hours of
7 negotiations. I would say one of the proposals did put in an
8 indication of interest. Both of the going concern vendors
9 needed to critical things, financing and trade support and the
10 financing needed trade support. Your Honor, we have a
11 Committee of 11 individuals on the Creditors' committee. Six
12 or seven of them are trade vendors. Your Honor,
13 notwithstanding that fact we could not muster before we went to
14 the sale process, before we commenced this bankruptcy to
15 convince them to take the risk and to supply us with trade
16 credit.

17 Your Honor, as seeing the DIP model which assumed
18 that we would be able to get trade credit. And notwithstanding
19 letters which I can't say were commitments by any vendor to
20 supply trade credit, we could not get trade credit from a
21 Committee that has a majority of members of trade credit.
22 Indeed, Your Honor, we went so far as yesterday to ask for a
23 three day extension, but in light of the fact that we had no
24 written letter or proposal we were not granted the three day
25 extension to adjourn this hearing to Tuesday which is the day

1 after the holiday.

2 So, Your Honor, notwithstanding the fact that we had
3 a vendor committee and landlords that we thought would be
4 supportive of all of these transactions I think they just said
5 it was now to either liquidate and realize the greatest value
6 in their view for the unsecured creditors and opposed to extend
7 this time deadline and give us any further time. There were
8 discussions about putting in bridge financing. I think the
9 request to put in bridge financing had to be at risk money and
10 people were simply not, without vendor support, prepared to put
11 in that trade risk money. Consequently, we were forced last
12 evening to go to an auction with respect to the full store
13 liquidation of the Circuit City chain.

14 Your Honor, we conducted that through, essentially, a
15 four-day process. Although we started it with information we
16 looked for full store liquidations from, essentially, two
17 chains -- two joint ventures. One we called the Great American
18 SV Capital Tiger Hudson. And the other we called Hilco
19 (phonetic) Gordon Brothers. Your Honor, both of those joint
20 ventures worked significantly over the last three to four days
21 giving us form agency agreements. We said that those for
22 agency agreements were unacceptable at one point because they
23 didn't provide sufficient value. We consulted with the
24 Committee. We consulted with the banks. We went back with a
25 proposal. They refused to meet our proposal in this difficult

1 time.

2 We then went back with one more proposal and as a
3 result of the back and forth negotiations in which the
4 Committee participated, in which the banks participated, in
5 which we shared information, we came to simply one offer from
6 Great American and I wanted to read some of the substantial
7 terms of that agreement.

8 Your Honor, for those people familiar or not familiar
9 with an agency agreement you bid on the value of the inventory.
10 The Great American bid or the Great American consortium has a
11 guaranteed amount of 70.5 on the cost value of inventory. And
12 inventory is to range somewhere we believe 1.1 billion to \$1.3
13 billion. Your Honor, in addition, this Great American bid met
14 our demands for a certain part of sharing of value. In
15 particular, and after you collect or after the estate collects
16 the 70.5 guaranteed amount on the cost value of inventory the
17 agent, that consortium, will receive a one percent fee.

18 So, then as you go through those proceeds roughly
19 after 71.5 for those keeping the math, the proceeds in addition
20 to that are split by the Great American bid, 70 percent to the
21 company, 30 percent to the agent. Again, after much
22 negotiations -- and there are persons in the courtroom that
23 could testify, but I'll take license unless people want to make
24 me make a proffer, the -- once they got to three percent fee
25 they then modified their bid again to now give us 90 percent of

1 the proceeds. So, after three percent which is roughly a 74.5
2 percent bid and ten percent for the estate. In exchange for
3 all of that, Your Honor, Great American insisted for us to get
4 that form bid to be the stalking horse bid that we would agree
5 to a breakup fee of \$7.5 million.

6 Your Honor, after discussions, again, with the bank
7 group, with the Committee, with the Committee's financial
8 advisors, FTI who is represented by Mr. Cashman in the
9 courtroom today, we ran numbers. We ran the permutations. We
10 also received a bid from the Gordon Brothers Hilco. We simply
11 determined that this bid was far better than the other bid by
12 tens -- at least, \$10 million. So, therefore, we accepted this
13 bid after negotiating back and forth with respect to the
14 breakup fee. It was higher. We asked for less. It was -- we
15 asked for less again and we eventually agreed to the 7.5 fee
16 given that this set such a significant floor for the estate.

17 Great American agreed to execute that agreement and
18 we started the auction with that as our stalking horse bid.
19 Your Honor, we then had further discussions with Gordon
20 Brothers and Hilco and I say we're probably at midnight last
21 night. And after going back and forth with them they were
22 unable to submit a topping bid on that basis. Your Honor,
23 under those circumstances back and forth and with the
24 Committees' advisors, the bank's counsel, myself, FTI,
25 management's input, we believe that the highest and best offer

1 for the assets we have as we stand here today is the full store
2 liquidation of the Circuit City stores whereby Great American
3 would conduct such store closings and those store closings will
4 commence tomorrow, January 17th, should Your Honor approve that
5 store closing.

6 Your Honor, with respect to the agency agreement it's
7 very much like the form of the agency agreement. I think we
8 have filed it today. We've had it in the courtroom. It is
9 very much like the agency agreement we filed with respect to
10 the 155 stores. The bid -- the sale guidelines which people
11 are concerned about are very much the same as the sale
12 guidelines Your Honor has approved. Obviously, there is now
13 the use of the phrase going out of business sales.

14 I know already that this morning and last night
15 counsel for the Great American Group is already been in contact
16 with many of the landlords to resolve all of those issues. We
17 believe that these guidelines are compliant with the attorney
18 general's --

19 UNIDENTIFIED ATTORNEY: I'm on mute, I just can't
20 hear anything that's being said.

21 THE COURT: I'm sorry. Would everybody on the phone
22 please set there phone to mute. We're getting feedback in the
23 courtroom. Please set your phones to mute.

24 UNIDENTIFIED ATTORNEY: Is there a way to identify
25 that individual and drop them as we did before?

1 THE COURT: Somebody's on a cell phone it sounds
2 like.

3 MR. GALARDI: If you're on a car phone -- thank you.

4 THE COURT: Okay. Thank you.

5 MR. GALARDI: Your Honor, going back to the
6 agreement, again, Mr. Cashman of FTI is in the courtroom today.
7 Mr. Cashman from a distance we -- actually, we're trying to
8 coordinate with the bidder right now. Mr. Cashman is aware of
9 and can testify to the back and forth, the bids, the analysis
10 of the bids with respect to FTI and it's conduct. I know
11 Jeffries is in the courtroom today. The counsel's in the
12 courtroom today. It was really a professional effort to
13 reevaluate all of these things.

14 The sadness is, Your Honor, I think as management
15 sits here today and has to explain to all of the employees over
16 the next 60 to 90 days is they were going to be let go and
17 given WARN Act notices today. Unfortunately, there will not be
18 a Circuit City after today and the management still believes in
19 its heart that with some additional time there would be a going
20 concern of 180 stores. There would be a going concern of 350
21 stores. I think this is simply a retailer that had a problem
22 at the wrong time in this economy and with the wrong vendors to
23 give the no support and they decided that they simply didn't
24 want number two to exist any longer. It is an unfortunate
25 circumstance, but it is a fact of this company.

1 Your Honor, we would ask Your Honor and I'll let
2 people take testimony if they want with respect to the side --
3 sale guidelines, Your Honor, as I said we believe that they are
4 consistent with what we have done before. We understand and
5 I'll leave to Your Honor that we have not given much notice of
6 the sale guidelines or the agency agreements. If Your Honor
7 wanted to take a break, obviously, for people to review that.
8 I know we've had some of the landlords -- as I called in the
9 landlord cabal, has reviewed it. I know they may have
10 comments. I don't know what Your Honor's preference is as to
11 the testimony or whether we want testimony.

12 I think the Committee supports the entry of the
13 agency agreement being approved immediately. It is,
14 unfortunately, two weeks before Super Bowl, so that also drives
15 a lot of the decision that are made, when you can maximize
16 value. I will say again, Your Honor, one of the bidders we had
17 discussions and I give them much credit that they were willing
18 to split a deal into the 200 400. Unfortunately, we just
19 couldn't get enough trade vendor support for this proposal.

20 I will leave it to Your Honor how you would like to
21 proceed, but we would ask Your Honor at the end of the hearing
22 to enter with great reluctance the approval of the agency
23 agreement which will have the liquidation of 567 retail stores.

24 THE COURT: Thank you, Mr. Galardi. I'd like to hear
25 from the Committee.

1 MR. POMERANTZ: Your Honor, Joe Pomerantz from
2 Pachulski, Stang, Ziehl and Jones on behalf of the Committee.
3 It's with a deep sense of sadness that the Committee which is
4 comprised as Mr. Galardi said of trade vendors, landlords,
5 litigation creditors appears before Your Honor seeking
6 supporting the approval of the store closing sale. We share
7 the Debtors' profound disappointment in the inability to
8 consummate a transaction with a going concern buyer. It is
9 unfortunate when a bankruptcy, especially of an iconic retailer
10 such as Circuit City, fails and the company's thrust into
11 liquidation with the attendant loss of jobs, trading
12 relationships and the profound effect on this community and
13 communities through the United States.

14 From the commencement of the case, Your Honor, the
15 Creditors' committee was supportive of the Debtor locating a
16 going concern buyer for Circuit city. The Creditors' committee
17 fought hard to obtain modification to the DIP financing that
18 would enable the Debtors to have sufficient liquidity to seek a
19 going concern buyer to save the company and maximize value,
20 maximize jobs. Notwithstanding the Creditors' committee's
21 efforts, the bank's efforts and the dedication of the Debtor,
22 its management and professionals, there were several factors
23 that ultimately led to the Debtors' failure.

24 First, Your Honor, the company's spiraling sales and
25 deteriorating financial performance resulted in the Debtors'

1 experiencing massive losses especially since the filing date
2 that the Debtors could not recover from. Same store sale
3 plummeted over 33 percent from last year and the Debtors,
4 despite their best efforts, consistently failed during the
5 post-petition period to meet the projections.

6 Second, as Your Honor's fully aware the world
7 wide recession, continuing softness in retail sector,
8 especially in high end discretionary items such as electronics,
9 the lack of any stability in the credit markets and the short
10 term economic outlook foreshadowed bleak results for the
11 company as it desperately tried to restructure its operations.
12 Against this backdrop and hundreds of millions of dollars of
13 pre-filing trade to (indiscernible) losses the trade creditors
14 were generally reluctant to extend credit unless and until the
15 Debtors could stabilize their operations and demonstrate to the
16 Committee that the company was a viable and continuing
17 enterprise.

18 The trade creditors were experiencing and are
19 experiencing challenges of their own. As a result of the world
20 wide recession and the pressures in their company and that made
21 these Creditors cautious in willing to put out more trade
22 credit. As a result of the foregoing events that were
23 developing during the first six weeks of the case, finally in
24 December all constituents, the Debtors, the banks, the
25 Creditors' committee agreed that it is prudent in the exercise

1 of their respective fiduciary duties to their clients to
2 accelerate the process by which the Debtors would attempt to
3 attract new capital or a going concern buyer.

4 From the outset of the case the Committee offered its
5 services of its legal, financial advisory and investment
6 banking professionals to the Debtors in any way possible in
7 efforts to avoid a total liquidation of the chain. To that
8 end, Jeffries offered the Debtors approximately 100 suggestions
9 of additional parties that Rothchild might contact to see if
10 they might be willing to buy the whole chain, to buy pieces.

11 The professionals stayed in close contact with the
12 Debtors' professionals throughout the process offering input
13 and advice of what progress the Committee needed to see in
14 order to support the process and what concerns the Committee
15 had with the business, with the process to enable it to support
16 a going concern bid. Notwithstanding these efforts and based
17 upon a variety of factors, potential white knights began to
18 pull out of the process thereby reducing the Debtors' chances
19 of a going concern sale. The reasons often cited for the
20 deteriorating financial performance, the lack of financing and
21 the challenging economy.

22 As the case progressed to early January, the Debtors'
23 options to choosing the going concern sale were essentially
24 narrowed to two parties as Mr. Galardi mentioned, one, the
25 Salinas Group, a strategic buyer, and one Goldengate, a

1 financial buyer. Salinas had been reportedly conducting due
2 diligence since the petition date and the Committee was
3 informed early on that Salinas might be interested in acquiring
4 the whole chain. The Committee understood from the get go that
5 Salinas had, as anyone would have, two threshold issues in
6 order to get into a position to be able to buy the company as a
7 going concern, financing and trade creditor support.

8 As to the financing, the strategic buyer faced what
9 turned out to be insurmountable challenges. The Committee was
10 in close contact with the bank counsel on, virtually, a daily
11 basis to find out how this bank group felt with respect to the
12 Salinas Group. It was early told to the Committee that at the
13 level needed to finance a 500 store chain this bank group could
14 not get sufficient financing and that a maximum amount of
15 financing it would get would be substantially less than the
16 financing the company went into the bankruptcy case with.

17 Despite continued optimism from the Debtors to the
18 Committee about the ability of Salinas Group to obtain
19 financing, the conversations the Committee had consistently
20 with the bank did not pretend such optimism. The message the
21 Committee consistently received that it was impossible to find
22 the full level of financing and, ultimately, that and that the
23 buyer faced substantial challenges to any sort of financing
24 from this bank group. Prior to the auction this bank group
25 informed the Committee that they would not be in a position to

1 provide any financing to this buyer.

2 The Debtors informed the Committee that it was
3 exploring financing from lenders outside existing syndicate to
4 support a transaction. The Debtors also explained that it was
5 developing alternative business plans which required less
6 financing. Despite repeated requests the Creditors' committee
7 never received any commitment letter from any lender indicating
8 a willingness or desire to finance the buyer at any level.
9 Accordingly, there was never presented any evidence that the
10 Committee found credible other than the Debtors' optimism when
11 we understand why the Debtors would try to be optimistic and
12 try to save the company, but the Committee never received any
13 evidence that this buyer could obtain the financing necessary
14 to consummate the transaction.

15 On a parallel track here, Your Honor, the buyer is
16 attempting to obtain sufficient commitment from trading
17 partners to provide unsecured credit. As to discussed above
18 the trade creditors because of their own situations and because
19 of the massive losses of hundreds of millions of dollars they
20 had a pre-petition claims were very cautious in their approach.
21 We understood that the buyer met with several trade vendors,
22 some who were on the Committee, some who weren't, in Las Vegas
23 at the Consumer Electronics Convention to discuss the buyers
24 ideas for the business and credit requirements.

25 Importantly, throughout the process the Committee

1 told the Debtor that the Committee needed certain information
2 to enable the Committee to evaluate the request for trade
3 credit, request for support of the continued support of the
4 process. First, the Committee needed a copy of the buyer's
5 business plan. Second, the Committee asked many times for a
6 term sheet from a buyer outlining the structure of a
7 transaction. Third, term sheets were indication of interest
8 from financing sources that would be sufficient to support a
9 business plan and fourth, Your Honor, a realistic time line for
10 consummating a transaction and what were the conditions that
11 would have to be met in order to get to a transaction.

12 Incredulously, Your Honor, notwithstanding the
13 Committee's repeated request for information and access to the
14 buyer, the buyer, virtually, ignored -- this is Salinas we're
15 talking about -- Salinas, virtually, ignored the Committee.
16 After the Committee's urging, the Debtor put the Committee's
17 investment banker in touch with the buyer's investment banker
18 right before the holiday season. The Creditors' committee
19 investment banker, Jeffries, reiterated to Salinas' bankers the
20 desire to work with the buyer and provided the buyer with a
21 roadmap. This is what you need to do in order to get Committee
22 support for a going concern.

23 The Committee asked for access to the buyer's
24 principles to make a presentation and then that caller was told
25 they were not available. Never were the principles or anyone

1 on behalf of the Salinas Group did they ever ask for a forum
2 with the Committee as an entity. On January 5th, the Committee
3 did hear back from the buyer -- the Committee didn't hear back
4 from the buyer and didn't receive any information as requested
5 up to that point. At the Committee's insistence a second call
6 happened between Jeffries and the banker. Again, reiteration
7 of request for the information that had now been out for three
8 weeks.

9 On January 8th, the Debtors provided the Committee
10 with a copy of the presentation that had been made to certain
11 of the vendors in Las Vegas. Through all this time no contact
12 other than a couple of calls with the buyer which led the
13 Committee to form -- start forming certain conclusions on the
14 process and the ability of this buyer to, ultimately,
15 consummate a transaction. There was a third call on January
16 9th after the motion was unsealed and the Committee was told
17 that the Salinas Group would not be submitting a bid by the
18 January 10th deadline, that the unsealing of the motion had
19 caused them to potentially rethink their strategy. They were
20 going to work over the weekend and they were going to come back
21 and let the Committee and the Debtor know where they stood, but
22 that they would not be submitting a bid.

23 The communication between our firm as counsel to the
24 Committee and Salinas' counsel was even more overwhelming. We
25 reached out to Salinas' counsel before the trade show

1 convention. Told counsel, "This is what you need to do to get
2 the Committee's support." It was a five minute conversation.
3 No conversations followed. Not once were we called by counsel
4 to talk about the structure of a transaction, to talk through
5 ideas, to let us know what they were thinking, what they were
6 working through, to give the Committee something to hold its
7 hand upon when the Debtor would come back and seek an extension
8 of the process which the Committee expected. The Committee
9 wanted to support a transaction. The Committee's always to
10 support a transaction and is deeply saddened that the
11 transaction hasn't occurred.

12 At the same time as the lack of communication between
13 the Committee and Salinas, the Debtors advised the Committee
14 that they were running numbers on alternative models which they
15 could believe could possibly financed. First, there was a 306
16 store chain model, then there was 180 store chain concept the
17 last one of which surfaced in the day or hours before the
18 auction.

19 Importantly, as far as the Committee is concerned
20 this was not a buyer coming to the Committee and saying this is
21 our proposal. This was the Debtor trying desperately and I say
22 this with great respect. The work that the Debtors'
23 professionals and the Debtors' management put in to try to make
24 this happen deserves a lot of accommodation. They did
25 everything they could, but this was the Debtors' proposal. We

1 never once heard that this buyer was supportive of this
2 proposal. We heard what the Debtor was saying. We were
3 hearing this from the buyer.

4 And to this day even after the auction or even during
5 the auction when we were in the same building for virtually
6 three days, did Salinas' counsel representatives come and
7 approach us and say, "This is a plan that could work. This is
8 what we need. Here's a structure. Here's terms." And to this
9 day we haven't received the signed term sheet. We haven't
10 received a financing commitment, at all. We haven't received a
11 critical path to a plan and we haven't received the conditions
12 that were necessary to get there.

13 We understand that the expedited nature of this
14 process, and the complexity of the Debtor's business operations
15 and the thought and effort required to consummate a
16 transaction. This is one of the biggest companies in the
17 United States. This has a lot of aspects. We appreciate that
18 these transactions are not put together overnight.

19 However, this buyer was involved from the get go of
20 the case. There's been eight weeks from what we've been told.
21 There's been substantial time and effort both by business
22 people and financial professionals conducting due diligence.
23 It's a little incredulous that they have not been able to put
24 pen to paper to provide us, at least, a roadmap, to provide us,
25 at least, an idea of how they get to Point A to Point B. And

1 every time the Committee was informed by the Debtor that
2 Salinas might do this or might do that we appreciated that. We
3 expected that to come. It never came.

4 Your Honor, Goldengate was the other buyer and we
5 understand it's been on the scene off and on over the last few
6 weeks. They were well regarded, well respected financial
7 buyer. As with the strategic buyer, the communication between
8 Goldengate and the Committee was virtually nonexistent.
9 Counsel has never spoken. Counsel for one of the buyers trying
10 to take the chain out of a bankruptcy who's serious and they
11 spend time and money we understand has never picked up the
12 telephone to call the Committee counsel and say, "What do you
13 need to support this transaction?"

14 There's been one form of communication between the
15 investment advisors. We received an indication of interest
16 that was two pages that, basically, was as vague as could be.
17 They were in. They were out over the last couple of weeks. We
18 heard that they were even going to be showing up yesterday.
19 Didn't show up to the auction, at least, they didn't come to
20 speak to us.

21 What the Committee did know about the Goldengate
22 transaction and, in fact, the Salinas transaction was that --
23 well, first the Goldengate transaction. We were told by the
24 Goldengate transaction there would be no cash to pay
25 administrative claims or unsecured claims and, potentially,

1 some paper given to the estate. Clearly inferior to a
2 liquidation which would have produced more value under the
3 terms negotiated with the Great American Group.

4 With respect to Salinas, there was some idea of some
5 type of cash. Wasn't clear it was going to be sufficient to
6 pay administrative claims. There was some thought about some
7 type of payment to unsecureds which would have had problems in
8 not paying administrative claims in full. So, from a value
9 standpoint which is not the only thing the Committee looked at,
10 but from a value standpoint contrary to a typical going concern
11 transaction which produces more value it was blatantly clear
12 that either of these transactions would produce meaningful less
13 value.

14 As discussed above, Your Honor, with the exception of
15 somewhat an encouraging week of financial performance, the
16 performance has been dismal and the Committee's financial
17 advisors continued -- and there's the Committee's financial
18 advisors expected there to be a continued financial drain on
19 this estate if the process was prolonged. It's against that
20 back up, Your Honor, that the Debtors' asked the Committee to
21 agree to a four-day continuance of the process.

22 The Committee has, from the commencement of the case,
23 Your Honor, continues to take its fiduciary duty very
24 seriously. It also takes the effect that its actions would
25 have on this community very seriously and has been supportive

1 for Your Honor at the hearings notwithstanding the concerns
2 that have been addressed privately, but we believe it as
3 important in a public manner given the scrutiny that this case
4 has experienced to be supportive of the Debtor and try to work
5 out our issues and concerns with the Debtor separately. And
6 they've given us access, and we've had discussions with them,
7 and they've been very good in the consultation process, no
8 complaints there.

9 We spent a lot of time evaluating the Debtors'
10 business, evaluating business plans, evaluating options,
11 evaluating the prospects for completing a sound transaction and
12 the deterioration of business. What the Committee's had to do
13 is attempt to balance the goals and the responsibilities of
14 achieving the going concern transaction and maximizing value
15 for unsecured creditors. This is a difficult job in any case
16 made more difficult in this case by the composition of the
17 Committee which included varying different types of creditors
18 with varying different types of interests and views.

19 Based upon the perceived progress of the buyers, Your
20 Honor, the continued deterioration and the likelihood that a
21 going concern transaction would produce less value the
22 Committee determined that continued prolongation of the process
23 was unlikely to bear any fruit and would just lead to continued
24 erosion of the Debtors' business. If the Committee thought
25 that there was any reasonable chance that there would be a

1 transaction that could occur the Committee would have
2 authorized the Debtor to go another few days. The Committee
3 saw nothing near the process.

4 As I hope my presentation demonstrates, Your Honor,
5 the Committee's decision in this case was not an easy one. In
6 refusing to consent to more time the Committee was mindful of
7 what the result would be, that would be a global liquidation
8 of the company and the hardship that would reverberate through
9 the employees -- the loyal employees of the company,
10 management, vendors, this community, the communities around the
11 country and is not a decision that was made lightly. The
12 Committee wishes that circumstances were different, Your Honor,
13 but, unfortunately, in this case it made the decision based
14 upon the foregoing factors and the exercise of it's fiduciary
15 duty. Thank you, Your Honor.

16 THE COURT: Thank you, sir. Mr. Galardi?

17 MR. GALARDI: Yes. Your Honor, may I make one
18 comment? It's not global. I -- Your Honor has been called by
19 Canada before and I don't want anyone to think Canada is still
20 proceeding as a going concern and there are going concern bids
21 with Canada, so I didn't want that comment to suggest that
22 there is still not a going concern in the Canada business
23 because I know we've been very sensitive about Canada.

24 THE COURT: Thank you for that clarification. My
25 question to you is, is there any reasonable chance a going

1 concern sale can be achieved if you have an additional four
2 days?

3 MR. GALARDI: Your Honor, I couldn't say that we
4 could consummate a transaction. That's, I think, where the
5 Committee is in those four days. We were hopeful that with the
6 extra time for those three -- actually, the three days, I
7 think, we -- four days with the weekend, Your Honor, was that
8 we would hopefully achieve what the Committee has insisted on
9 whether it was -- we couldn't have financing commitments.
10 We've been told that. Well, we were told by one party is they
11 may be able to raise a certain amount of money for that period
12 of time, but it was not enough to offset what they believed the
13 deterioration of the collateral was. We had tried to put the
14 money in in a position that would be below the banks, above the
15 vendors, but then you have the subordination issue which only
16 exacerbates the situation if you don't close.

17 Does the management team believe that there is a
18 viable business somewhere whether it's 305 or 180? Absolutely,
19 Your Honor. Do we be able to achieve that in three days? No,
20 we could not achieve that closing in three days. Do we
21 believe -- and I'm sure everybody here is investment bankers
22 and management teams, if I only knew I could, I should have had
23 three more days I could've achieved something. I think we
24 could've achieved something, but Your Honor -- and I think the
25 Committee it's a hollow victory what we would achieve because

1 what is absolutely clear and we make such about not having
2 pieces of paper. It's hard to have pieces of paper that say,
3 "I will have 400 million of trade vendor support," and have a
4 Committee composed of six vendors reject that because those six
5 vendors are there for a reason. They're our top ten creditors.
6 If they're not giving trade support how can somebody be taken
7 seriously.

8 So, it's a chicken and egg problem that we have dealt
9 with since the very day I got -- came to the company that the
10 banks have dealt with. The banks will say, "Well, you need
11 trade support. That means you need letters." Do I have
12 commitments from the vendors? Well, if the Committee wouldn't
13 give a four-day extension why should be believe you'll even get
14 there?

15 We have the Las Vegas letters, but they're not
16 commitments, Your Honor. They're not lawyer letters that saw,
17 "I will commit to \$100 million of financing." We need that
18 financing and when it Committee that has vendors, as many
19 vendors as a majority are unprepared to extend that says
20 something. It says that those vendors who this business would
21 be dependant on are not yet prepared for good business or other
22 reasons. They are not prepared in three days to say they're
23 going to have trade credit and a buyer's not going to waste
24 their time continuing this if you don't get trades abetted.
25 This company as all retailers greatly depend, if not entirely

1 depend, of the continued support and trade credit of vendors.

2 So, the simply answer, no, Your Honor, I can't
3 consummate a sale in four days. I don't even know if I could
4 get firm commitments because the commitments are going to have
5 outs that you're going to have to have trade credit. And I've
6 got a Committee that consists of six members who have, at
7 least, as a majority -- maybe there are some supporters, will
8 not give that trade credit two of whom are not even vulnerable
9 for any liability because they have credit insurance and we
10 were unable to get credit insurance.

11 So, that's our problem, so I can't say to you today
12 we could do that. Hope springs eternal, but we actually had
13 people that were still interested even interested that sat
14 through the three days that we sat through in those conference
15 rooms, people that said we put 50 million and the Committee
16 says, "Put it below us in a non-refundable deposit." That's
17 not going to happen when the Committee doesn't even want to bet
18 on themselves.

19 So, I think the simple answer is do we believe with
20 30 days could we get there? Sure. That's they proposal we had
21 made. We can't say we can compensate people for the
22 deterioration. That's the fiduciary duty issue that we all
23 faced and I can't say I can get bank commitments because I
24 can't bet a bank commitment without trade vendors and I can't
25 get trade vendors without some bank commitment.

1 So, again, that's my dilemma. Three days would not
2 do it, Your Honor, but three days may have gotten us that much
3 closer to give people confidence, but I just can't do it and I
4 am in default under the DIP. And I understand why lenders
5 don't lend without trade support when it Committee doesn't
6 support. I understand why trade support doesn't give trade
7 support if they don't see a business plan. It's just a very
8 unfortunate fact because there is, I think, a profitable
9 business within the 574 chain stores.

10 THE COURT: Thank you. The Court's going to take a
11 30 minutes recess. We'll come back at 1:30, actually, a 25
12 minutes recess, so people in the courtroom can look at the
13 guidelines that Mr. Galardi has circulated.

14 UNIDENTIFIED ATTORNEY: Your Honor?

15 MR. GALARDI: Post order and guidelines here, Your
16 Honor, for people.

17 THE COURT: Thank you.

18 UNIDENTIFIED ATTORNEY: Your Honor?

19 THE CLERK: All rise. The Court is now in recess.

20 (Recess)

21 THE CLERK: Please be seated and come to order.

22 MR. GALARDI: Your Honor, I'll look for guidance to
23 you as to how you would proceed. I don't -- we have a number
24 of objections. I think one thing I have to say on the record
25 so that it may help with some people in the courtroom and also

1 on the phone because they'll ask. It may be obvious to some of
2 us. There's noting to assume any contracts under this
3 agreement. So, there is no attempt to assume contracts. It
4 will still be the Debtors' obligation until there's a lease.
5 It's still the Debtors' obligation with respect to executory
6 contract, with respect to performing of services, with respect
7 to utilities. We have a pass through or we're getting
8 reimbursed for those expenses, but it is literally an agency
9 agreement and all of the rights and remedies of any contract
10 party including these parties are to be exercised against the
11 Debtors with respect to their leases. If there are issues and
12 I know we'll have issues with perhaps sale guidelines and other
13 sorts of issues, but with respect to contracts none are being
14 assumed and assigned today, none are being rejected today and
15 we are not trying to delegate our responsibility to the agent.
16 It is still a Debtor obligation.

17 With that, Your Honor, I'd ask you how you would like
18 to proceed? I don't know if parties wanted to have evidence or
19 question the evidence or we go through objections to the sale,
20 however you would like to proceed.

21 THE COURT: All right. Thank you. I've read the
22 agency agreement and I read it exactly the way that you
23 represented it on the record, Mr. Galardi. What I would like
24 to do is hear any objections that any party has to the agency
25 agreement. Does any party wish to be heard? Maybe this is

1 easier than you --

2 MS. ANDERSON: Your Honor, Margaret Anderson on
3 behalf of Old Republic Insurance Company.

4 THE COURT: We'll take objections in the courtroom
5 first and then I'll hear objections on the phone.

6 MS. ANDERSON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. GALARDI: Your Honor, would it be best if we just
9 go from A through and just through them as a housekeeping
10 matter instead of just doing it that way we can keep track.

11 THE COURT: That will be fine. That makes good
12 sense, so we'll hear first the --

13 MR. GALARDI: Your Honor, what I have is on actually
14 Page 25 of my amended agenda and the first one that I have is
15 response to an partial objection by Children's Discovery
16 Centers of America, Inc. and --

17 THE COURT: All right. Does anybody wish to be heard
18 in connection with the objection of Children's Discovery
19 Centers of America?

20 THE COURT: All right. Let's move on then.

21 MR. GALARDI: Your Honor, the joint objection of the
22 taxing authorities -- Texas taxing authorities. It's probably
23 Michael Reed and Beth Weller (phonetic). I understand what
24 they want. We will -- we're going to talk about segregating
25 funds. I know they have legal counsel. Maybe I'm wrong which

1 taxing authority.

2 MR. CHARBONEAU: I believe he is, Your Honor. Joel
3 Charboneau, C-h-a-r-b as in boy, o-n-e-a-u, here on behalf of
4 Arlington ISD and related parties and then Louisville
5 Independent School District. On the phone are Elizabeth Banda
6 and Andrea Sheehan (phonetic) and I know that they wanted to
7 take this opportunity to address the Court.

8 THE COURT: Okay. Those parties on the phone may
9 address the Court.

10 MS. ANDERSON: Margaret Anderson, Your Honor, on
11 behalf of Old Republic Insurance Company. I'm sorry. I --

12 THE COURT: We're going to get to Old Republic in
13 just a minute.

14 MS. ANDERSON: I'm sorry.

15 THE COURT: I think we're looking for the Texas
16 Taxing Authorities counsel on the phone.

17 MS. BANDA: Yes, Your Honor, Elizabeth Banda on
18 behalf of Arlington Independent School District, et al. and as
19 Mr. Galardi mentioned if he is going to be segregating those
20 funds I believe that maybe we can discuss further with him that
21 segregation.

22 MR. GALARDI: Your Honor, with respect to taxes
23 having done these sales before with those jurisdictions. There
24 are a few of them that have secured. We'll enter into separate
25 stipulations where we can reserve funds to determine the

1 priority and extent of the liens and it's just easier to take
2 that out of the proceeds. What we'll do is enter into
3 stipulations myself and Mr. Fredericks will contact them or
4 they should contact us and deal with that by separate
5 stipulation.

6 THE COURT: All right. So, that will be dealt with
7 by separate stipulations, is that satisfactory?

8 MS. BANDA: That is satisfactory to Arlington ISD, et
9 al., Your Honor.

10 THE COURT: All right.

11 MR. GALARDI: I just got the Texas Taxing Authority
12 incorrect, but --

13 THE COURT: All right.

14 MR. GALARDI: -- I've done it a few times.

15 MS. ROMERO: Your Honor, that would be the same for
16 Martha Romero who's representing the Riverside County taxing
17 authority.

18 THE COURT: All right. Which letter objection is
19 yours?

20 MR. CHARBONEAU: On the docket, Your Honor, Joel
21 Charboneau, it is Letter R. And Joel Charboneau here again.
22 Local counsel for Riverside County, California, and I filed a
23 motion to have Martha Romero admitted pro hac vice and we would
24 request that the court enter that order. It was submitted, but
25 returnee. There were some confusion about the motion being

1 filed and it was.

2 THE COURT: All right. Very good. The motion pro
3 hac will be granted and then the objection of Riverside County
4 will be resolved through separate stipulation.

5 MR. CLARK: Your Honor, this is Robert Clark,
6 assistant Douglas County attorney. That's Douglas County,
7 Colorado. We filed objections on January 12th, but for some
8 reason they don't show up on the agenda for today. I think our
9 treatment would want to be the same as for the other taxing
10 authorities and we can work that out separately as long we have
11 a fair crack at the proceeds according to our lien.

12 THE COURT: All right. Is that acceptable, Mr.
13 Galardi?

14 MR. GALARDI: That's acceptable, Your Honor. We're
15 going to try to resolve all of those, but as long as they
16 attach to the kinds of proceeds we get here because there's
17 some confusion sometimes. If they attach to the personal
18 properties as being sold and then as long as Mr. Burman's
19 (phonetic) clients and we and the Committee all have a fair
20 crack at whether those are, in fact, secured proceeds I think
21 it's the way that we'll have to do it here.

22 THE COURT: All right.

23 MR. GALARDI: And it will not be an immediate. I
24 want to make clear though to people we don't receive under this
25 agency agreement immediate proceeds. There's not a guaranteed

1 amount. It's not an equity bid. It comes in over time, so it
2 will have to be funded over time in accordance with -- what
3 with a budget, but we will be doing that and we'll work those
4 stipulations out. But, it's not as if we get cash tomorrow and
5 all of a sudden can fund hundreds of million, you know hundreds
6 of thousands and I think it's going to be in the millions of
7 dollars of proceeds we going to have to work out. Just like
8 Mr. Burman's client is going to await a pay down on its
9 facility, other lien creditors are going to have to wait for
10 that as the sale proceeds, but that's exactly what I think all
11 of the State laws require anyway. So, we'll have a timing by
12 which it has to be done by in accordance with the proceeds and
13 how we expect them to come in.

14 THE COURT: Very good. Does that resolve Items J and
15 K, as well? That's the Palm Beach County tax collector and
16 another local Texas taxing authority?

17 MR. REED: Your Honor, this is Michael Reed. I
18 represent other Texas tax authorities and we are fine with
19 segregated funds being put apart. We'll have to work with Mr.
20 Galardi to see how that will come out of the proceeds in what
21 sort of order these things will be funded, but I think we
22 should be able to go forward from there. My question, Your
23 Honor, is whether all the aspects of the sale agreement are
24 being -- are subject to approval today, or whether it is the
25 agency agreement and the authorization to proceed with the

1 liquidation sale that's going to be approved.

2 MR. GALARDI: Your Honor, we are seeking approval of
3 the agency agreement, the order, and the sale guidelines. I
4 know that there may be concerns by some agencies or other
5 authorities with respect to the sale guidelines and I'll
6 address those as we go through the objections, but we're
7 seeking full authority to proceed with the sale starting
8 tomorrow according to the guidelines and then to work with the
9 proceeds as if we were liquidating -- that we are liquidating
10 the inventory in the various jurisdictions; Colorado, Texas,
11 whatever the state is, and segregate out of the proceeds from
12 those jurisdictions in a mechanism that is acceptable to those
13 authorities and to the -- our current DIP lender.

14 THE COURT: All right. Thank you, Mr. Galardi.

15 MR. REED: Your Honor, in that case, you know, there
16 has been no form of order circulated that would approve it in
17 some of the -- some aspects of the motion itself held
18 provisions that would be compromising to the position of these
19 tax authorities, vis-a-vis, rights that are granted in the DIP,
20 what it says regarding proceeds as they'll all be handled
21 regarding the DIP, but the Texas taxing jurisdictions reserve
22 the right to object at this time to the establishment of that
23 escrow and it would need to be clear in the order that this was
24 going to happen.

25 THE COURT: Mr. Galardi is going to enter into

1 separate stipulations we're the taxing authorities on that.
2 Obviously, if you don't feel that your concerns are getting
3 proper treatment you can always come back to this Court, you
4 know, on an emergency basis or whatever, you know, basis you
5 need to get relief from the Court. But, I think that separate
6 stipulations will address the issues, at least as they've been
7 presented to me today.

8 MR. GALARDI: And, Your Honor, I do want to make
9 clear to the taxing authorities that there's the sale of the
10 inventory. There is not at this time other personal property
11 that's being sold. And there's only an option to sell the
12 furniture, fixtures and equipment, which a lot of their liens
13 may attach to, and that's not going to happen for a month or
14 two from what I understand. It's the process.

15 So, I want to be clear that when we're granting this
16 relief we want to make sure, 1) that their lien actually
17 attaches to the stuff, the inventory that they're selling.
18 That'll be the funding mechanism, and then 2) is, we sell
19 proceeds. It will attach to that. So, that's why I want to
20 work it out if -- but we will work it out. I know most of the
21 taxing authorities and I'm sure we'll be able to address it.

22 THE COURT: All right. Very good.

23 MR. CHARBONEAU: Your Honor, really quickly. Joel
24 Charboneau here on behalf of Palm Beach County Tax Collector.
25 We filed a motion in pro hac vice to get Ben -- I'm sorry --

1 Brian Hamlin admitted before the Court. I ask the Court to
2 grant that order and it's been submitted to the Court. I know
3 Brian is on the phone and the Court addressed Letter J which
4 was that objection and I'll let Mr. Hamlin speak to that.

5 THE COURT: Mr. Hamlin?

6 MR. HAMLIN: Yes, Your Honor. Thank you for the
7 Court's courtesy and time this afternoon. I've heard all the
8 prior arguments and I agree, Your Honor. I just wanted to
9 bring to the Court's attention, I know we heard a lot of
10 concern about the loss of jobs and it's a concern here in Palm
11 Beach County, as well. And the aspect of the taxes are 2008
12 pre-petition taxes become delinquent on April 1 and we are
13 still providing, you know, the public safety and welfare on
14 behalf of the buildings and the assets of the debtor. I'll
15 work with debtor's counsel and see if we can work something
16 out.

17 And we have the second aspect or second factor issue
18 with respect to our taxes of 2009 taxes which are now
19 post-petition. I just wanted to let debtor's counsel know we'll
20 work with them and let the Court know that these are the issues
21 that we're concerned about and we'd like to get these taxes
22 paid because we are providing these services right now whether
23 we want to or not. And in addition to the loss of the tax base
24 itself in the community and the loss of jobs in the community,
25 we'd like to be as aggressive possible to see what we can do to

1 get these uncontested tax amounts paid. They're secured by a
2 statutory first lien.

3 I believe most of the ad valorem tax issues around
4 the country are similar in nature, and it is on tangible
5 property. It is not on the inventory. So, we look forward to
6 working with counsel and see if we can do this as efficiently
7 as possible rather than waiting for claims objections down the
8 road because I think our facts are relatively uncontested.

9 Thank you very much, Your Honor. And we'll work with a
10 separate order.

11 THE COURT: Thank you, Mr. Hamlin. Yes, ma'am?

12 MS. SOUTH: Your Honor, Rhysa South with Henrico
13 County Attorney's Office. You had asked about Item K.

14 THE COURT: Yes.

15 MS. SOUTH: That is the County's objection. We've
16 spoken with debtor's counsel and we're amenable to the
17 segregation of funds. I've also spoken with Mr. Feldman about
18 an issue on the going out of business sale which I think he'll
19 address in a moment.

20 THE COURT: All right. Thank you.

21 MS. SOUTH: Thank you.

22 THE COURT: All right. So, I think that we've
23 addressed all of the taxing authorities. That, I guess, takes
24 us up to Item C.

25 MR. GALARDI: C. And, Your Honor --

1 MS. ROMERO: Your Honor, can the taxing
2 authorities -- Martha Romero from Riverside County,
3 California -- be excused then?

4 THE COURT: Yes. The taxing authorities may be
5 excused if they wish.

6 MS. ROMERO: Thank you.

7 THE COURT: Okay. Item C is the D.L. Peterson Trust.
8 Is counsel here?

9 MS. BRAUCHER: Good afternoon. Ann Braucher, DLA
10 Piper. It's B-r-a-u-c-h-e-r, on behalf of D.L. Peterson Trust.
11 Our objection was limited to the facts that our equipment which
12 is leased to the debtors is not addressed specifically in the
13 sale motion, and it seems since I stood up that that is not an
14 issue anymore, that the equipment will not be sold immediately,
15 and also we're happy to hear that no leases are being assumed
16 or rejected today. So, I just state my appearance.

17 THE COURT: So, your objection is withdrawn then?

18 MS. BRAUCHER: I think so.

19 THE COURT: Okay. Thank you.

20 MS. BRAUCHER: Thank you.

21 MR. GALARDI: And if it's a lease, Your Honor, I
22 don't think we can sell their property, though we might try at
23 times. The next one is CIM Birch Street, Your Honor. I think
24 it's a statement of cure. I think it's a lease issue, so I'm
25 not sure. I think that's probably a non-issue, but --

1 THE COURT: All right. Is counsel here for CIM Birch
2 Street? Okay. I agree that it's a cure issue under a lease
3 and so that would be denied to the extent.

4 MR. GALARDI: Your Honor, the next matter is the
5 objection of objecting landlords to motion to sell
6 substantially assets. I don't know if there's an outstanding
7 objection. That was Docket 1569. I don't have a much more
8 specific -- there could be many objecting landlords, Your
9 Honor, so -- that would cover by the title.

10 MR. NEWMAN: Your Honor, Kevin --

11 THE COURT: Mr. Epps, are you responsible for this
12 one?

13 MR. NEWMAN: Yes, Your Honor. Kevin Newman, Mentner,
14 Rudin & Trivelpiece, P.C. for each of the objecting landlords
15 noted in Docket 1569. I'm happy to report that that
16 objection's been resolved.

17 THE COURT: Okay. Be so noted on the docket. Thank
18 you.

19 MR. NEWMAN: You're welcome.

20 THE COURT: Okay. The Item Number F is the limited
21 objection of Henrico County. We just heard that one with Ms.
22 South. And then next --

23 MR. GALARDI: Is -- I have objection of Business
24 Objects Americas to debtor's motion found at Docket Number
25 1573.

1 MR. HAGGERTY: Good afternoon, Your Honor. Richard
2 Haggerty by phone on behalf of Business Objects Americas. I'm
3 also here on behalf of SAP Retail which is Item H. These are
4 related objections. And based upon representations by Mr.
5 Galardi today, it doesn't sound like, at least immediately, the
6 debtors intend to assign or sell any licenses, leases, or
7 things like that. These objections had to do with the possible
8 assignment of software licenses that are held by my respective
9 clients, and provided that that's not in the offing, I think
10 our objections have been resolved.

11 THE COURT: All right. They'll be so noted as
12 resolved on the docket. Thank you, Mr. Haggerty.

13 MR. GALARDI: And I can confirm for the gentleman
14 that those licenses and intellectual property, none are being
15 assumed and assigned or rejected today pursuant to this motion.

16 MR. HAGGERTY: Thank you, Mr. Galardi.

17 THE COURT: All right.

18 MR. GALARDI: Your Honor, the next one is FM Facility
19 Management. I know the counsel --

20 MR. PERKINS: Good afternoon, Your Honor. Chris
21 Perkins from LeClair Ryan on behalf of FM Facility Maintenance.
22 I'm joined by my co-counsel, Nancy Washington of the Saiber
23 firm in New Jersey. A motion to admit her pro hac vice is
24 currently pending. She'd like to be heard on the objection.

25 THE COURT: She may. And your motion pro hac will be

1 granted.

2 MS. WASHINGTON: Thank you, Your Honor. Good
3 afternoon.

4 THE COURT: Welcome to the court.

5 MS. WASHINGTON: Thank you, Your Honor. My client,
6 FM Facility Maintenance, provides nationwide maintenance
7 services to all of Circuit City's retail locations. I just
8 received the agency agreement today. I wasn't involved in the
9 negotiations, not for lack of trying to get into the mix as
10 this was unfolding for the last few days. I am advised by Mr.
11 Galardi that the expenses that relate to my client are
12 pass-through expenses. I don't necessarily read the agency
13 agreement that way, but Mr. Galardi is way smarter than I am,
14 so I'm going to take him on his word and then look to work with
15 Mr. Galardi to get the necessary assurances that I need so that
16 my client can continue to perform under the contract, or at the
17 very minimum, I am assured that the contract isn't being
18 rejected today and that I have a reservation of all of my
19 rights under the contract, as well as my right to payment and
20 for my post-petition administrative priority claim, which, by
21 the way, Your Honor, is accruing at a pretty rapid clip given
22 the nationwide services that we provide.

23 THE COURT: All right. Very good.

24 MR. GALARDI: I agree with everything except --

25 THE COURT: The -- nothing in the agency agreement

1 relieves the debtor's responsibility for administrative
2 expenses that your client is -- would incur.

3 MS. WASHINGTON: Thank you, Your Honor.

4 MR. GALARDI: I agree, but you're far smarter. Going
5 to J, I think we have dealt with J which is the objection of
6 Palm Beach County.

7 THE COURT: Yes.

8 MR. GALARDI: Again, objection K is a local taxing
9 authority. I think we've objected -- I mean I think we
10 resolved that. And now we come to the L which is the Old
11 Republic Insurance Company objection.

12 THE COURT: And counsel's tried to speak to several
13 times on that already, so counsel on the phone for Old
14 Republic.

15 MS. ANDERSON: Yes, sir. Margaret Anderson on behalf
16 of Old Republic Insurance Company.

17 THE COURT: Okay. And it looks like your local
18 counsel, Kevin Lake, is here, as well.

19 MR. LAKE: For the record, Your Honor, Kevin Lake on
20 behalf of Old Republic. And, Your Honor, I filed a pro hac
21 motion for Ms. Anderson last night.

22 THE COURT: Okay. And that pro hac motion will be
23 granted.

24 MR. LAKE: Thank you, Your Honor.

25 THE COURT: Ms. Anderson, you may proceed.

1 MS. ANDERSON: Your Honor, we have objected to the
2 proposed sale and the agency agreement because we view it as a
3 substantial increase and the risk being insured by Old Republic
4 Insurance Company. And, in effect, a defacto assumption of the
5 workers compensation policy. Under the workers compensation
6 policy we insure employees of the debtor. We never meant to
7 underwrite the risk of insuring employees controlled by a third
8 party which would be what would be happening here.

9 Although technically the retained employees remain as
10 employees of the debtor, they are effectively under the control
11 of the agent and we believe that the facts and circumstances of
12 the going out of business sale substantially increased the risk
13 being incurred by Old Republic, and that we should not be
14 forced through the agency agreement to effectively be forced to
15 enter into a defacto assumption agreement of the policies that
16 the party we never agreed to underwrite.

17 This is particularly a concern of Old Republic
18 because the policy issued by Old Republic to the debtors is
19 loss-sensitive which means that the debtors and their estates
20 are obligated to reimburse Old Republic for deductible payments
21 under the policy, and the deductible here is significant in
22 size. And those payments to injured workers could go on for
23 years if not decades, and Old Republic effectively is being
24 forced to provide insurance with no assurance that it will be
25 paid.

1 THE COURT: All right. Thank you. Mr. Galardi, do
2 you wish to respond?

3 MR. GALARDI: Yes, Your Honor. First, the agency
4 agreement is not an assumption, it is actually just what it
5 says. It is the appointment of an agent. We are still liable
6 for the control of our employees. Yes, the agent can go in and
7 help liquidate the stores and help direct that, Your Honor, and
8 I think this comes down to 1) we're not assuming and assigning
9 that contract, 2) there's not a date facto assumption. I don't
10 think that concept's in the bankruptcy code, and 3) if there's
11 a basis on which Old Republic wants to move to compel or were
12 not performing, it has its contract rights under 365 and it can
13 come in and do so. I think this is a concern that we can
14 address, but it's not right for an objection to the sale when
15 it's not a sale of their contract, and there is no showing or
16 evidence and we'll put it on an expedited basis that somehow
17 we've increased our risk or not still supervising on employee,
18 so I'd ask that it be overruled.

19 THE COURT: Ms. Anderson, I'm going to overrule your
20 objection, but it's without prejudice to you being able to
21 bring an appropriate motion before the Court under Section 365
22 if you are not adequately protected because of the increase
23 risk or for any other reason.

24 MS. ANDERSON: Thank you, Your Honor. We will try to
25 work with the debtors to reach a business solution, but if

1 we're unable to do so we'll be filing the appropriate motion
2 for relief from stay to abolish -- to terminate the policies.

3 THE COURT: Thank you, Ms. Anderson.

4 MS. ANDERSON: Thank you.

5 MR. GALARDI: Your Honor, that brings us to objection
6 of Cormark Inc. to the debtor's proposed sale.

7 MR. McCULLAGH: Good afternoon, Your Honor. My name
8 is Neil McCullagh. I'm here on behalf of Cormark Inc. Your
9 Honor, the purpose of Cormark's objection is to preserve its
10 reclamation rights. Your Honor, Cormark is a company based in
11 Illinois that manufactures, among other things, display
12 equipment for the debtor's products. In the latter half of
13 2008, Cormark sold the debtor approximately a million dollars
14 of cabinets and other equipment that is used by the debtor to
15 display its inventory to the public. Specifically, it's used
16 to display MP3 players and related items to the public. So, I
17 think this product sold by Cormark qualifies as FF&E as opposed
18 to inventory. Cormark filed a timely reclamation demand in
19 late November in the amount of \$205,574.28.

20 THE COURT: And how does the agency agreement affect
21 your rights for reclamation --

22 MR. McCULLAGH: Your Honor, I've reviewed it briefly
23 this morning before I came to the hearing. As I understand it,
24 and as I believe Mr. Galardi said, at this point the liquidator
25 is only going to sell inventory --

1 THE COURT: Right.

2 MR. McCULLAGH: -- but has an option to sell FF&E at
3 a later time. The point of my objection and what I would ask
4 the Court to provide in the motion is that Cormark's
5 reclamation rights are not deemed compromised by the agency
6 agreement or the sale. My concern, Your Honor, is that either
7 through the -- well, through the agency agreement in
8 particular, the liquidator might deem themselves a good faith
9 purchaser of Cormark's assets and sell those and claim that
10 they have the right to those funds, thereby effectively wiping
11 out Cormark's reclamation rights. Cormark can file a prompt
12 TRO and bring this matter before the Court, but I'm concerned
13 that this sale order could be used by the debtor or by the
14 liquidating agent to claim that those reclamation rights have
15 simply been run over.

16 THE COURT: All right. Thank you. Mr. Galardi?

17 MR. GALARDI: Your Honor, I have no objection
18 preserving whatever reclamation rights they have, Your Honor,
19 and I have been through the reclamation. I actually believe
20 that they have no reclamation rights based on their demand.
21 But, leaving that aside, they can take whatever. As I said
22 when the reclamation motion was on, they should take whatever
23 procedure because I believe with the change in the bankruptcy
24 code, they actually had to file a TRO probably a month and a
25 half ago.

1 So, I don't believe they have reclamation rights, but
2 if that's the action they have to take. I don't want to invite
3 somebody to do it, but I did it before and I'll do it again.
4 So, whatever rights they have, nothing in this order will
5 affect those, but I actually wanted counsel to understand, we
6 don't believe they have any reclamation claims or rights.

7 THE COURT: So, we're not preserving -- we're not
8 creating a right here --

9 MR. GALARDI: We're not creating a right here.
10 That's what we wanted to make sure.

11 THE COURT: -- but to the extent that there is one,
12 it's preserved.

13 MR. GALARDI: That's correct.

14 THE COURT: Okay.

15 MR. McCULLAGH: Thank you.

16 THE COURT: Thank you. All right. The next one is
17 Hagan Properties, Inc.

18 MR. LAKE: For the record, Your Honor, Kevin Lake on
19 behalf of Hagan Properties, a landlord. Your Honor, this
20 morning we entered into an agreement with the liquidator
21 evidenced by an exchange of e-mails which slightly tweaks the
22 sale guidelines as to this particular landlord at its location,
23 and based on that we will withdraw the objection.

24 THE COURT: All right. It will be withdrawn.

25 MR. LAKE: Thank you, Your Honor.

1 MR. GALARDI: Your Honor, and as is standard, there
2 are very many side agreements, and this order approves the
3 entering into such side agreements.

4 THE COURT: All right. The next one is the objection
5 of TJ Maxx.

6 MR. GALARDI: Your Honor, I have -- am I wrong? Is
7 it -- I'm up to O, Cellco.

8 THE COURT: Oh, I'm sorry. I skipped O. I
9 apologize. Cellco Partnership.

10 MR. GALARDI: Since she sat with us at the auction
11 for a part of the day I thought I'd remember Verizon, Your
12 Honor.

13 THE COURT: Okay.

14 MS. KALBON: Thank you, Gregg. Thank you, Your
15 Honor. Regina Kalbon again, for the record, for Verizon
16 Wireless. Your Honor, just a couple conceptual comments and
17 then I had some problems with the order, so I'm not sure how
18 you wanted to handle that. But, conceptually, I guess first
19 and foremost, you know, we are -- it's really unfortunate that
20 the debtor finds itself in this situation, and given the
21 magnitude of this liquidation, we want to make sure that we are
22 coordinated with the debtor. And so, we have asked for a point
23 person, at least from the debtor's business side, as well as
24 from the liquidator.

25 I have spoken to Mr. Docksdeal (phonetic) of SB

1 Capital and he is coordinating and heading the liquidation
2 efforts and has assured me that he will get me a coordination
3 person for Verizon so that we're not tripping over each other
4 and we can make an orderly exit from each of these 545 stores.
5 And so, and I -- but I do still need a contact person from the
6 debtor. I still have not gotten that since the last hearing of
7 someone who will coordinate our efforts and our exit from --
8 and our kiosk removal from each of the locations. I don't
9 think it's an issue. I think by now everybody knows that we
10 own the kiosks and we own the inventory that's in the cages.

11 THE COURT: Which is locked up separately.

12 MS. KALBON: It's locked up and I keep describing it,
13 but I went in and made sure I told the liquidator that so
14 that -- but there are four liquidation companies, so again, the
15 concept of being coordinated and making sure that all four of
16 them know that and so we don't have them selling the FF&E, and
17 that is one of the concerns about this agreement. Unlike
18 Hilco, this one does extend to the FF&E, and I just want to
19 make sure that they are aware that the kiosks are property of
20 Verizon and put that on the record and make that part of this
21 record.

22 Having said that, there are then a couple other
23 things that I need to point out. We ran into one issue with
24 the Hilco liquidation and that is in the print ads. The debtor
25 still has to comply with consumer protection laws and, you

1 know, not having any ads that are misleading, and of course the
2 debtor doesn't intentionally do -- would never do that. But,
3 we did have a run-in with the State of Arizona that they want
4 to make sure that the disclaimers, when they say everything on
5 sale except for Verizon Wireless products, that it's big
6 enough. So, they -- our argument requires that before the
7 debtor use Verizon Wireless' name in any ad or in any manner
8 that it has pre-approval with Verizon. Verizon Wireless turns
9 around that advertising process pre-approval almost
10 instantaneously, so it doesn't hold up any process.

11 So, we just have to make sure that that is complied
12 with, that it's in our agreement. We have to make sure if --
13 in any print ads that they make sure that they're complying
14 with the consumer protection laws. Then there is some language
15 in the order that gave me some pause on that, so if I could
16 turn to that at the appropriate time I'd like to do that.

17 One more comment. The liquidator's going to be in
18 through March 30th. That is the exit date. There is a ten-day
19 provision where they will give ten days notice to the debtor of
20 an early exit, whether it be the end of January or February,
21 whatever. The liquidator has agreed to add Verizon Wireless to
22 that ten-day early exit notice, so I'd like that included in
23 the order as well since we do have that agreement. So, then,
24 Your Honor, if I may turn to the order that I've tried to
25 absorb because it is a lot to absorb in one sitting.

1 THE COURT: What are you going to be doing on behalf
2 of Verizon? Are you just going to remove all of your inventory
3 from the stores at this point and your kiosk, or do you plan to
4 actually do business and continue to sell during the going out
5 of business sale?

6 MS. KALBON: Well, Your Honor, the way we did it with
7 Hilco was, we continued to operate and sell product, and then
8 at the point in time where it didn't make sense for us to
9 remain in the store because either traffic wasn't enough or
10 whatever, we came upon a mutual schedule that was -- that we
11 agreed with the debtor and we exited those stores. Was
12 envisioning we'd do the same kind of coordination effort. If
13 we want an earlier exit I guess we can always come to Your
14 Honor if we can't agree with the debtor and file an emergency
15 motion to have our contract rejected. But, at this point we've
16 just been agreeing on the appropriate exit to dates for each of
17 the locations and staying in for the sales. At the same time,
18 the debtor earned commissions on that, so it has been
19 beneficial to both parties.

20 Mr. Galardi has suggested that with respect to our
21 issues that we do a separate stipulation regarding the
22 procedures and the mechanisms and things that we are concerned
23 about with respect to it which is fine. They generally refer
24 to the -- where the order is requiring the transfer of assets
25 or gives the agent the ability to transfer assets, they're not

1 going to be transferring our assets. It uses the word assets,
2 the trademark issue that I mentioned and the sale of the FF&E,
3 so -- the coordination and the advertising issue. So, I would
4 like to just make sure if we can do that in a side letter or
5 stipulation, however that is appropriate. I'm happy to
6 expedite that along that way.

7 THE COURT: And I think that's the best relief you
8 can get because then you'll be able to tailor it to your needs.
9 If you do have a problem you know you can come back to this
10 Court and get the relief that you need.

11 MS. KALBON: I thank Your Honor. We'll work
12 diligently with the debtor to do that quickly so that we're
13 not -- we're all in sync. Take care.

14 THE COURT: So now we're up to P, is that right?

15 MR. GALARDI: Yes, Your Honor, and that's an
16 objection of TJ Maxx for adequate protection. I think that's
17 resolved, but --

18 MS. HUDSON: Good afternoon, Your Honor. Lisa Hudson
19 on behalf of TJ Maxx of California, LLC here with Steven T.
20 Hoort. I moved for his admission pro hac vice along with
21 Heather Zelevinsky yesterday and that order is pending, but Mr.
22 Hoort would like to be heard.

23 THE COURT: All right. And the motion for pro hac
24 will be granted.

25 MS. HUDSON: Thank you, Your Honor.

1 MR. HOORT: Thank you, Your Honor.

2 THE COURT: Welcome to the court.

3 MR. HOORT: Steven Hoort, Your Honor, Ropes & Gray.

4 Mr. Galardi represented that he is not now -- the debtor's not
5 now seeking authorization to assume, reject, or sell free and
6 clear of leases or subleases, and based on that representation,
7 TJ Maxx of California, LLC is withdrawing its objection.

8 THE COURT: Thank you very much, sir.

9 MR. HOORT: Thank you.

10 MR. GALARDI: Your Honor, I'm up to Objection Q which
11 is the joint objection by landlords and --

12 MR. PERKINS: Your Honor, Chris Perkins on behalf of
13 various landlords too numerous to list, but it is Docket Number
14 1590, and that objection is withdrawn.

15 THE COURT: Okay. Thank you. And R we've already
16 taken care of. That's --

17 MR. GALARDI: And R we've already taken care of, Your
18 Honor. I don't know, again, given the notice period, whether
19 there are other parties in the courtroom whose objections we
20 need to address.

21 THE COURT: Is there any party -- other party --

22 MR. GALARDI: Not that I will invite them.

23 THE COURT: We'll hear from Ms. Pierro first.

24 MS. PIERRO: Good afternoon, Your Honor. Kimberly
25 Pierro here on behalf of Chase Bank USA National Association,

1 and I have my co-counsel, Weil, Gotshal & Manges on
2 telephonically who may jump in with some details. The issue we
3 have involves a stipulation that was approved by this Court on
4 December 24th and was negotiated between Chase and Circuit
5 City.

6 Paragraph 9 of this stipulation provides for what
7 happens when a liquidation happens and the effect of this. In
8 particular, there is a withholding of daily settlements
9 provision upon the liquidation up to the amount of \$3 million
10 on notice that there would, in fact, be a liquidation. I
11 understand that today Chase received written notice of the
12 complete liquidation of the stores, and so that is going to go
13 into effect immediately and I wanted to get that on the record
14 that it was going to go into effect immediately and would
15 object to anything in the sale order that would contradict that
16 provision of the stipulation.

17 THE COURT: Is there anything in the sale order that
18 contradicts your -- that provision?

19 MS. PIERRO: Not that I've seen, but in the sale
20 order that is entered. In addition, under the stipulation
21 Circuit City was required to provide three business days notice
22 to Chase of -- prior to the announcement of a complete
23 liquidation. And as notice was just received today -- it was
24 just announced today -- that provision -- they are in violation
25 of this provision of this stipulation as a result of the

1 notice. There are issues involved in that violation of the
2 stipulation, including a right to set off.

3 There are certain amounts that are owed both ways;
4 Circuit City to Chase and Chase to Circuit City, and in
5 particular, some deadlines for payment are forthcoming and we
6 would ask that the rights to set off that are triggered by a
7 violation of the stipulation and ultimately default of the
8 program agreement be preserved, specifically with these
9 upcoming dates. I understand that we are going to be working
10 with the debtor with regard to rejection of that agreement
11 because it's not an agreement that can be assumed and we would
12 file a motion to compel rejection should we not be able to
13 reach and we would want to get that expedited in front of the
14 Court as soon as possible to wrap that up.

15 But, in the meantime, as these payments are coming
16 due to Chase we would ask for authority to withhold payments
17 due to be able to assert out setoff rights that would be
18 upcoming and that we believe we would be entitled to that is
19 all being triggered from the liquidation.

20 THE COURT: So -- but, this you would have to bring
21 on in a separate motion. I mean, you're not objecting to the
22 agency agreement or to the liquidation sale itself, are you?

23 MS. PIERRO: No. No, we are not. We are just
24 getting on the record the effect of the liquidation that's been
25 announced today.

1 THE COURT: Okay. Well, I'll take notice of that,
2 but I think you need to file an appropriate motion. You can
3 certainly bring it on on an expedited basis and the Court will
4 hear that, you know, to the extent you're not able to resolve
5 the issue consensually with the debtor, okay?

6 MR. GALARDI: And, Your Honor, we'd -- I have had
7 contact with the lawyers from Weil Gotshal. There was,
8 obviously, the obvious problem of giving three days notice
9 before this because there was that concern. We'll work with
10 them to try to resolve that three-day issue. We're not trying
11 to prejudice them with that. And then with respect to the
12 other relief, I think, Your Honor, we would support their
13 having to file a separate motion for setoffs and those kinds of
14 things because it could actually damage our cash flow and all
15 the parties that are interested in paying their secured liens
16 and everything else as pay well, that would have a great effect
17 on us.

18 THE COURT: Yes. Very good.

19 MR. HOLTZER: Yes, Your Honor. It's Gary Holtzer,
20 Weil Gotshal. Thank you very much for allowing us to
21 participate by phone. Just so the record is clear, the
22 stipulation that this Court has signed already grants JPMorgan
23 Chase relief from the automatic stay to effectuate the setups.
24 We'll work with Mr. Galardi to come up with any additional
25 documents in order to finalize the result of the failure to

1 give the three days notice which, as Mr. Galardi indicates,
2 there wasn't time to give. And if it requires, for example, a
3 motion to compel rejection of our agreement, which is incapable
4 of being assumed now that the stores are being liquidated,
5 we'll file that very quickly, Your Honor, and bring it on in an
6 expedited fashion so that it doesn't cause any interruption
7 with respect to payments that are potentially going back and
8 forth. I think the next one in question is on the 26th. We
9 will file something early in the week if we need to to make
10 sure Your Honor can hear it and resolve it before that's to
11 occur.

12 THE COURT: And the Court will accommodate you in
13 that regard, sir.

14 MR. HOLTZER: Thank you very, very much.

15 THE COURT: You're welcome. All right. Thank you,
16 Ms. Pierro. Now, Mr. Epps?

17 MR. EPPS: Good afternoon, Your Honor. A.C. Epps,
18 Jr. on behalf of a number of landlords as the Court is aware.
19 Your Honor, this is -- we have disseminated this order and the
20 procedures to our landlord clients. We don't know offhand if
21 there are any particular problems. We do notice that there is
22 a procedure for a resolution for the Court. What we have
23 discussed with the debtors, and I believe we reached agreement
24 upon, is if a particular landlord cannot work things out with
25 Great American or with the debtor, that they would be entitled

1 to come in, as it says, on an expedited notice, but the next
2 omnibus hearing date would be acceptable to the debtor for that
3 expedited notice. And in that -- in connection therewith we
4 would ask that if that is what our landlord wants to do that
5 they be allowed to dispense with the motion and order for an
6 expedited hearing if the actual hearing is that date.

7 THE COURT: Of course. Yes, we can do that. If it's
8 going to be on the next omnibus date then we can do that.

9 MR. EPPS: Yes, sir. That's the date we're
10 discussing.

11 THE COURT: Yes.

12 MR. GALARDI: And since they can arise at any time as
13 long as we're going to be here, Your Honor, I don't -- as far
14 as we know we're going to be addressing an issue, that's fine.
15 I'm not -- I don't need a minimum notice or anything of that
16 sort.

17 MR. EPPS: Thank you, Your Honor, that's all.

18 THE COURT: All right. Thank you.

19 MR. LEHANE: Good afternoon, Your Honor. Robert
20 Lehane from Kelley, Drye & Warren on behalf of a number of
21 landlords, and also speaking for some of my brethren in the
22 landlord cabal. Commend the very hard work of the estate, the
23 committee, and all the parties over the last several days.
24 Very difficult process.

25 We had a couple minor comments to the order that we

1 just wanted to point out that the estate has agreed to. One is
2 with respect to the abandonment of property, and the property
3 left in the premises pursuant to the automatic rejection in
4 this order is deemed abandoned to the landlords and they can
5 dispose of that property without liability to any third
6 parties. And there is other -- some side agreements with
7 landlords as were noted to the extent there's a rejection. If
8 there's not a rejection -- if there's a rejection effectuated
9 by this and there's abandonment issues then that would be
10 abandon and the landlords could dispose of --

11 THE COURT: And this is just liquidation?

12 MR. LEHANE: Right.

13 THE COURT: Right. We're going to take care of
14 rejection at a later date.

15 MR. LEHANE: Right. To the extent of side agreements
16 with landlords, there's just one or two spots in the order
17 where we wanted to clarify that the conduct of the sales is
18 also subject to those side agreements and so those comments
19 have been dealt with. Thank you very much, Your Honor.

20 THE COURT: Thank you, sir. Anybody else wish to be
21 heard?

22 MS. HERSHEY LORD: Your Honor?

23 MR. FALZONE: Your Honor --

24 THE COURT: Let me hear from Mr. Falzone first.

25 MR. FALZONE: Good afternoon, Judge. Michael Falzone

1 for 50212 A6 Street, LLC and various other landlords. Judge,
2 we have a couple of concerns about the sale guidelines. I
3 didn't know if you wanted to take those up now or -- we're
4 still doing the order, but I wanted to make sure that I had a
5 chance to be heard on that.

6 THE COURT: You can be heard. You don't think you
7 can work out those -- your concerns with the sale guidelines?

8 MR. FALZONE: I would like to try to work those out
9 with Mr. Galardi. Let me just for the record state that my
10 concerns have to do with -- first of all with the landlords not
11 having access to the premises during the sale. We would like
12 to have the opportunity to show the premises to potential
13 tenants in the event the leases are rejected and to be able to
14 do that during the sale. And the second point is that we would
15 like to have some proof of insurance from the agent in the
16 event that there is damage to the premises during the sale.
17 But, I will talk with Mr. Galardi about those issues.

18 THE COURT: All right. Thank you. All right. Now,
19 the person that was on the phone that wanted to raise an
20 objection.

21 MS. HERSHEY LORD: Good afternoon, Your Honor. My
22 name is Nancy Hershey Lord. I'm an assistant attorney general
23 with the State of New York.

24 THE COURT: Okay.

25 MS. HERSHEY LORD: Your Honor, I think that we do not

1 have -- you do not have written objections from any of the
2 states. I think that was primarily because of the fact that
3 this became a store closing situation with certainty, I guess,
4 midnight last night. Typically the debtors who are seeking to
5 have going out of business or store closing sales know and
6 circulate to the states by e-mail -- they have particular
7 people that they do circulate it to -- the proposed order and
8 the sale guidelines with respect to store closing sales,
9 particularly with respect to the issues of consumer protection
10 and the terms of sales to consumers and the -- and customers --
11 and the terms of returns and exchanges and refunds and gift
12 cards and other consumer-related issues. We did not get such
13 an e-mail midnight last night or since.

14 I think I got on the phone and several of the sister
15 states got on the phone when we saw a press release issued a
16 little while ago during this hearing and I guess before this
17 aspect of the hearing that the stores were going to be
18 liquidating. I speak with concern with respect to the fact
19 that the sale guidelines do not contain any of the typical
20 provisions that we do negotiate in these cases with the
21 liquidators and with the debtors and they're silent. I don't
22 know what the proposed order includes.

23 Typically there are provisions that delineate between
24 liquidation laws and other state laws. They provide a period
25 of time by which the states can come in with respect to

1 objections, with respect to liquidation laws, and they also
2 state that there is -- that the order does not affect the
3 states with respect to their other laws of the police and
4 regulatory-type laws. I don't know if any of that is in there.
5 Again, the states have not seen that proposed order.

6 There are also issues with respect to privacy that we
7 ordinarily seek provisions on, and again, the debtors and the
8 liquidators know all of this. With respect to this agency
9 agreement which I have read, I see that the exchanges and
10 refunds are specifically detailed, and instead of a 30-day
11 return policy, which was typical for Circuit City, they have
12 reduced that to 14 days. And presumably notice of that will go
13 out to consumers.

14 With respect to gift cards, gift certificates and
15 rebates for which this Court earlier in the case issued an
16 order authorizing the debtor to, if it so desired, to continue
17 all of those gift card programs, and I understand the debtor
18 has. And, in fact, the debtor has continued post-petition to
19 sell gift cards. Just a few minutes ago I went on the website
20 and I think I'm still able to buy a gift card if I so choose.

21 We don't know what the debtor is going to be doing.
22 The section of the agency agreement that I'm looking at at
23 9.2(b) says as directed by merchant. Agent will accept
24 merchant's gift certificates, gift cards and rebates prior to
25 the sale commencement date. But, we don't know from this what

1 the merchant's position is going to be. So, we don't even have
2 the knowledge to provide to consumers as to what they're to do
3 with the gift cards. These are priority claims or
4 administrative expense claims if they were sold since the
5 petition.

6 So, 1) again, we don't know the answer to that, so I
7 don't know whether to be talking about terms of an objection
8 with respect to gift cards. I've got questions about the
9 website, the e-gift cards, the warranties and guarantees and
10 other customer programs that were in effect before and during
11 this case. So, I would state the objection in that way, say we
12 have not had an opportunity and then we want an opportunity to
13 negotiate the consumer-related issues on the sale guidelines
14 and on the order once we --

15 THE COURT: All right. Thank you. Mr. Galardi, do
16 you wish to respond?

17 MR. GALARDI: Yes, Your Honor. Going through 92 and
18 understanding the sensitive nature of all of this, maybe our
19 language, it says as directed by a merchant on gift cards and
20 rebate we have directed the agent to accept the gift cards, so
21 I think that clarifies that issue. We've had discussions,
22 obviously, to honor those, especially pre-petition ones, is to
23 decrease the recovery, but after conversations with the
24 committee and how the best way to get the sales and also get
25 people in the stores still, we are honoring those gift

1 certificates.

2 Your Honor, we were not sure that it was a 30 or 14
3 days, but when we talk about the return of merchandise, and
4 more importantly the refunds, refunds is cash out of the
5 company, so we are giving notice that the refund policy will be
6 14 days whether or not it was 14 or 30 and I think that's
7 always complied with most of the AGs. Returns of merchandise,
8 again, we put the 14 days because when you return the
9 merchandise it's going to be difficult to sell again, so we put
10 the 14-day terms on. Again, all of that, we believe is clear
11 from the agreement and consistent with the many, many retail
12 cases that we've done.

13 We also had, and I think it's important to point out
14 in Paragraph 13 of the sale order, that actually, you know,
15 maybe it's not -- we think it's the state of the art which has
16 been approved in Delaware and New York recently and all the
17 retail provisions. It may not be consistent with every single
18 order, but I think it's important to point out that all of the
19 rights are reserved the governmental units to raise all of
20 these kinds of issues to come in here and to have this Court
21 resolve these matters. We think this language is more than
22 adequate to address it.

23 Obviously, as counsel concedes, both debtor's
24 counsel, committee counsel and the liquidator's counsel, as
25 well as the bank counsel have done this a couple times before,

1 know the issues and think we've resolved them all. I don't
2 think I've ever had in my experience, actually, a governmental
3 unit actually show up in court within that 14-day period. But,
4 they're certainly welcome to look at these. What I would ask
5 Your Honor is to prove this, and if they need to have expedited
6 relief because we submit something, I know Your Honor is
7 available.

8 But, if there's not a need for expedited relief and
9 there are open issues, again, like we did with the landlords on
10 the sale guidelines, whatever day they want to give notice, if
11 they want to be here on the 29th hearing arguing about those
12 issues, we'll be here, make ourselves available to address
13 them. But, it's at least been my historical experience that
14 between us, the liquidators and the other parties of interest,
15 we've been able to resolve these and not have to come to court
16 on that. I hope that gives the state attorney generals some
17 comfort, and I do apologize for not sending the e-mail at
18 two-thirty last night.

19 THE COURT: All right. Thank you, Mr. Galardi. I
20 think that that would be satisfactory. Does any of the state
21 attorneys general have a problem with their rights being
22 reserved? They can come into this court on an expedited basis
23 or on a non-expedited basis just by noticing up any difficulty
24 you'd have for the next omnibus hearing on the 29th?

25 MS. HERSHEY LORD: Your Honor, I'd like -- I would

1 like a commitment from the debtor's attorney if I can have it
2 that he will allow the states to get on a conference call with
3 him so that we could add some sale guidelines that I don't
4 think are going to be objectionable and that we have -- and
5 typically in all the sales. And again, I did not -- I have not
6 seen the proposed order. I looked on PACER and could not find
7 it.

8 THE COURT: All your rights are reserved under this
9 order, and so -- and I realize you haven't seen it, but nothing
10 in the order is going to prejudice any right that you have.
11 And if you need to come to the court, you know, on an expedited
12 basis because of some problem you can, but I think Mr. Galardi
13 has represented that he will resolve all of your issues with
14 you, but if for some reason you can't, then this Court will be
15 available to address any concern you have either on an
16 expedited basis or a non-expedited basis.

17 MR. GALARDI: And, Your Honor, and I give her my
18 commitment, and I'm going to also commit the Gordon Brothers
19 agents and their counsel because, really, this always comes
20 down to their helping to resolve -- not Gordon Brothers.
21 That's the last thing they want to do.

22 (Laughter)

23 MR. GALARDI: The great American --

24 THE COURT: Great American. Thank you.

25 MR. GALARDI: -- SB Capital, and my apologies, Your

1 Honor -- to get on a conference call. We have their e-mails.
2 We know the counsel who normally does this. So, we will get
3 that, and if they wanted to schedule a time sometime early next
4 week after they have an opportunity the weekend to review, I'm
5 sure we can have a conference call and try to resolve those
6 issues.

7 MS. HERSHEY LORD: Your Honor, we appreciate that,
8 and I thank Mr. Galardi for that commitment, and we will do
9 that on Tuesday if possible, or earlier. I just want to just
10 clarify that the agent on the merchant's direction will be
11 accepting gift cards, gift certificates and rebates throughout
12 the entire sale.

13 THE COURT: Yes. That's what the representation was.

14 MS. HERSHEY LORD: Thank you. And, Your Honor, there
15 are some other states on the phone. I don't know if any of
16 them will want to speak up.

17 THE COURT: Well, this goes for every state. No
18 state is being prejudiced by the entry of the order.

19 MS. HERSHEY LORD: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MS. WAIT: Your Honor, Carolyn Wait here for the
22 State of Oregon. I had one tiny question. If the
23 determination is to stop accepting gift cards, would it be
24 possible to include in the order a provision that notice would
25 be given to the states of that change?

1 THE COURT: Well, what I would prefer is that you
2 talk to Mr. Galardi about this at the conversation on Tuesday
3 or Wednesday of next week whenever that conversation occurs so
4 that there'd be some sort of a uniform provision that is
5 acceptable to the states. If you can't get agreement, then by
6 all means come back here and I will order it.

7 MS. WAIT: Thank you, Your Honor.

8 MS. HERSHEY LORD: Your Honor, it's Ms. Lord again.
9 I failed to mention something. Is the debtor going to be
10 taking down its website and it will, I assume, cease selling
11 gift cards as of today?

12 MR. GALARDI: Your Honor, we're going to work with --
13 I believe we are going to cease selling gift cards today. As
14 to taking down the website and the timing of that, that's
15 another issue because that does have an impact on -- we think
16 it's a valuable website. It may be an asset we want to sell
17 and we wanted to coordinate. The agency agreement actually
18 allows certain access subject to reasonable agreements, I
19 believe, between the parties. So, I can't say today we're
20 taking down the website, and indeed -- and those markets should
21 close faster, people can use their gift cards. So, it does
22 have an advantage to many of the states where you have closed
23 stores, for example, when we closed Regents. So, I don't think
24 it's -- we haven't made a decision yet to close the website
25 down.

1 MS. HERSHEY LORD: But, you'll stop selling gift
2 cards?

3 MR. GALARDI: Yes. I believe that's unwise for us to
4 do so, yes.

5 MS. HERSHEY LORD: Thank you.

6 THE COURT: All right. Any other party wish to be
7 heard?

8 MR. BERLIN: Your Honor, Brett Berlin from Jones Day
9 appearing telephonically on behalf of Jantzen, J-a-n-t-z-e-n,
10 Dynamic Corporation, one of the debtor's landlords. I
11 appreciate very much the opportunity to appear telephonically.
12 Thank you. I will speak briefly.

13 I just wanted to make what I hope is a clarification
14 for the record with respect to my landlord client which is for
15 similar relief to -- the relief that came up a few minutes ago
16 with one of the other attorneys in the courtroom who was
17 speaking for a group of landlords that under the circumstances
18 my client has not really had any opportunity to review the
19 store closing sale guidelines, and that we would do so and try
20 to work with the debtors. If we have any concerns about them,
21 to resolve those concerns as promptly as possible, but that in
22 the absence of any resolution we would be able to come back
23 before Your Honor, perhaps on January 29th or soon thereafter
24 as possible to get a resolution of any concerns that we cannot
25 resolve with the debtors and the liquidator.

1 THE COURT: Yes. That applies to all landlords,
2 including your client.

3 MR. BERLIN: Thank you very much for the
4 clarification, Your Honor. One last point which is just to
5 inquire of the debtors whether -- is there a particular
6 representative of the liquidator J.V. whose name and number you
7 could announce now on the record for us to contact, or do you
8 want me to just contact you separately to gain that information
9 from you?

10 MR. GALARDI: I'm going to keep Mr. Raskin's e-mail
11 and phone number confidential, but if you send us an e-mail we
12 will -- we'll give it out unless you think it's wise to give it
13 out.

14 MR. BERLIN: No, that's fine. I can get in touch
15 with you, Mr. Galardi, and --

16 MR. GALARDI: And we'll give the -- just give it to
17 us and we'll also go through Wachtell who is representing the
18 Great American Joint Venture. So, they will coordinate the
19 name of the person.

20 MR. BERLIN: That's fine. I'll contact -- I'll make
21 that contact if I need to do so after my client review the
22 guidelines.

23 MR. GALARDI: Thank you.

24 MR. BERLIN: Thank you.

25 THE COURT: Is there any other party that wish to be

1 heard?

2 MR. BILLOWS: Your Honor, Pete Billows on behalf of
3 five of the debtor's landlords. I have had an opportunity to
4 look at the sale guidelines, but I, like most, just received it
5 this morning and haven't had a chance to talk with my clients
6 about them. And certainly we would welcome having a discussion
7 with Great American or whoever we need to discuss a possible
8 resolution to them.

9 But, I did want to put on the record and note my
10 objection to a couple of the provisions of the sale guidelines,
11 notwithstanding Your Honor's courtesy reservation of rights
12 with respect to them only because the sale is to begin tomorrow
13 and I think that there are a couple of these that are going to
14 affect my clients most immediately. And in looking at the sale
15 guidelines, Your Honor, Letter D of the sale guidelines which
16 is Exhibit 2 to the agency agreement, there is a statement that
17 the merchant and agent shall be permitted to utilize sign
18 walkers. While it's not unusual to see sign walkers in the
19 sale guidelines, I think it is a little unusual to have no
20 limitation on that. And normally we'd come to an agreement
21 that the sign walkers will not be on the shopping center
22 property. Obviously, that raises certain liability issues.

23 I think if the liquidator were to agree to indemnify
24 for any loss with respect to any liability that a sign walker
25 may cause or may himself or herself incur or damage that they

1 may incur, that we have that agreement today on the record or
2 that with respect to my client's properties, that that piece of
3 the sale guidelines will not be effective until we can come to
4 some resolution.

5 With respect to exterior banners which is, again,
6 part of Letter D in the sale guidelines, we certainly have an
7 issue with respect to how the exterior banners may be affixed,
8 and really in cases of liquidations, how they are normally
9 affixed to the building. And notwithstanding the
10 representations that the agent will not make alterations to the
11 store front and exterior walls, we have had experience with --
12 bad experiences with exterior banners that do cause significant
13 damage to the facade.

14 And again, we'd want at least today on the record, an
15 agreement from the liquidator that they will pay for any
16 damages caused by the affixation of the exterior banners or in
17 the absence of that a -- again, a carve out of that piece of
18 the sale guidelines with respect to my client's properties.
19 We'd also like, I think, contact people who are on the ground
20 that are at the various locations.

21 In addition to talking with the representative of
22 Great America, I think it makes sense if Mr. Galardi would be
23 kind enough to pass along or someone from his office would be
24 kind enough to pass along contact people at the various
25 locations where my clients can more immediately register or

1 issue -- register issues or complaints with them.

2 Finally, Your Honor, in addition to the objection of
3 the sale guidelines, I do want to not ask the Court to
4 reconsider as some of the landlords have done, your decision of
5 a couple of weeks ago regarding the stub rent, but rather renew
6 our motion which we had filed back in December on the stub rent
7 issue based on as you put it, I think, in the order, Your
8 Honor, changed circumstances. The first round of store
9 closings as Your Honor may be aware, there were issues of
10 payment of stub rent under 365(d)(3), and my understanding from
11 conversations before that last hearing with debtor's counsel
12 was that with respect to store closing agreements were being
13 reached by which -- or through which stub rent would be paid.

14 We also heard earlier, Your Honor, from Mr. Foley
15 with respect to some of the landlord objections or motions to
16 compel pursuant to 365(d)(3) that those motions had been
17 resolved, although we didn't get any specifics about how those
18 were resolved. I don't know whether those were leases that
19 were leases for some of the ongoing store closings or whether
20 they were leases that were similar to the leases of my clients
21 which were -- which are now, you know, subject to the second
22 round of store closings.

23 So, I'd like to renew that motion only because I
24 think that given the changed circumstances that to the extent
25 that stub rent's been paid for some landlords that there needs

1 to be equitable treatment. I think, Your Honor, when you made
2 your decision which was really based on not giving superior
3 priority to landlords, that that wasn't a decision that you
4 were making by which you were handing to the debtors discretion
5 to give super priority or not. I think it was what it was
6 which was you were not going to make a decision that was going
7 to permit stub rent to be -- or to compel stub rent to be paid
8 immediately.

9 So, to the extent that the debtors have chosen to pay
10 stub rent, I think that there needs to be equitable treatment
11 at this point for all landlords given that we really are all in
12 the same boat, assuming that Your Honor approves this agency
13 agreement, and we're talking about a company-wide liquidation.
14 Thank you, Your Honor.

15 THE COURT: All right. Thank you. All right. With
16 regard to the objection to the sale guidelines regarding
17 exterior banners and sign walkers, those objections are
18 overruled without prejudice to counsel being able to renew
19 those either on the 29th or if for some reason on an expedited
20 basis between now and then, and I would like you to direct
21 those concerns to counsel for Great American and get those
22 issues resolved consensually, and if you cannot, then you can
23 come back before this Court. And the motion to reconsider the
24 stub rent issue is also denied. Is there any other party that
25 wishes to be heard in connection with the order or the agency

1 agreement or the guidelines? Yes, sir.

2 MR. FELTMAN: Good afternoon, Your Honor. Josh
3 Feltman from Wachtell Lipton on behalf of the Joint Venture,
4 sometimes referred to as the liquidator. I just wanted to
5 address a couple points. Agree with everything that's been
6 said and I think we've reached reasonable resolutions of every
7 issue that's been raised.

8 Very early on in the hearing Mr. Galardi described
9 the fundamental economics of the transaction. I just want it
10 to be clear that before either the agent or the company will
11 share in the upside of revenues above the guaranteed amount,
12 part of the guaranteed amount is expenses, and expenses get
13 paid first. Lest it go on the record, otherwise we need to pay
14 from proceeds the expenses of the sale.

15 Second point to address, the attorney general who I
16 have sympathy for having not seen a lot of what we would've
17 liked for them to have seen had there been time, I think they
18 will find that a lot of the modern "technology" from recent
19 sales and comparable unfortunate situations of liquidating
20 retailers are built in. The distinction between a safety law
21 and a general law being absolutely required to be followed and
22 not at all affected by this Court versus a GOB sale related law
23 where there's some relief being given, but the states still
24 have the right to come in, object, expedite a notice and so
25 forth.

1 So, I think they will be content with that. Also was
2 not mentioned that there is in the order and in the agreement
3 itself restrictions on the use of confidential information.
4 Let me make it clear that we're not buying any confidential
5 information. We're not buying any customer lists. We're not
6 selling any customer lists and so forth.

7 The Verizon representative was here from Verizon who
8 we spoke to. We certainly absolutely acknowledge that we are
9 not selling inventory that does not belong to the company and
10 that belongs to Verizon. We absolutely will not use their name
11 in any type of advertising that we may due jointly with the
12 debtor. We will, of course, comply with consumer protection
13 laws, and if it is such that you have to say excludes Verizon,
14 we will make every endeavor to cooperate both before -- not
15 before the sale begins because that's basically now, but as
16 soon as possible to figure out in advance how to make that
17 work.

18 I don't want to promise right now that every single
19 ad that may be subject to such a consumer protection law we
20 will run by them ahead of time, but comparable to our
21 commitment to work with the landlords, to work the attorney
22 general, I'm very confident that we'll make this work, and we
23 will talk to you about protocols and principles, and any
24 standards you've learned from your prior experience we will
25 apply as a general matter. But, I just don't -- I just want to

1 be clear that it's not probably going to be functional to show
2 every single ad that may have this ahead of time, and I
3 understood counsel to say that they will be considerate and
4 expeditious and considering, but the truth is, these sales, the
5 prices change all the time. The discounts change and the
6 process is very quick and we just wanted to --

7 MS. KALBON: Your Honor, then maybe we can work out a
8 form of that of some sort. We'll try to work --

9 THE COURT: That's what I was thinking.

10 MS. KALBON: We'll work something out.

11 THE COURT: All right.

12 MS. KALBON: Or else be back before Your Honor.

13 Thank you, Your Honor.

14 MR. FELTMAN: And that was really it. One of the
15 landlords or one the last landlord representatives to speak
16 raised concerns about sign walkers not on the properties. It
17 is our policy not to have the sign walkers on the shopping
18 center properties. We don't -- it was raised. I just want to
19 say we're not committing to indemnify anybody for any damage.
20 A landlord would clearly have under its lease claims as
21 administrative expenses for damages and whatever other rights
22 it has under its lease because those leases have not been
23 rejected and the debtor may have rights against us if we're
24 negligent and so forth, so the landlord, I'm sure, would have
25 some rights. I just want to be clear that we are not as such

1 indemnifying.

2 That being said, we have every intention of putting
3 up signs consistent with both the sale order, with the
4 guidelines, with all the side agreements and technical
5 provisions that the idiosyncratic -- that the landlord's
6 idiosyncratically have and -- but I just wanted to leave it at
7 that. And that's it. We are sorry the company's in the
8 situation it is. We hope that we can bring some return for the
9 remaining stakeholders. Thank you.

10 THE COURT: All right. Thank you. It has been the
11 Court's experience that while these issues are raised such as
12 sign walkers and banners and such at the front end as grave
13 concerns that they almost always get resolved consensually.
14 But, again, any party that needs to can come back to the Court
15 if that's not the case in this circumstance. All right, Mr.
16 Galardi.

17 MR. GALARDI: Your Honor, I guess we sadly and
18 reluctantly actually ask that you approve the sale to the Great
19 American Group and allow them to go forward with the agency
20 agreement, the sale guidelines and the proposed form of order.

21 THE COURT: Thank you. It is indeed unfortunate that
22 the debtor finds itself in the situation that it's in today.
23 This is a very sad day for management, for the employees, for
24 the customers and for the community. Circuit City has been a
25 very good corporate citizen in this community for many years,

1 and this is probably one of the most difficult things I've been
2 asked to do since I've been on the bench. And I will
3 reluctantly grant your motion and enter that order. Any
4 further business today?

5 MR. KAPLAN: Your Honor?

6 THE COURT: I'm sorry. Who's on the phone?

7 MR. KAPLAN: I'm sorry, Your Honor. This is Gary
8 Kaplan from the Howard Rice law firm in San Francisco. We
9 represent one of the landlords named Eel McKee. And I
10 apologize since this has been gone over already, but is there a
11 proposal as to when the debtors propose to reject the various
12 leases and surrender the premises?

13 THE COURT: No release is being rejected by the
14 Court's order today.

15 MR. GALARDI: Just for the information. We intend to
16 do a lease procedure that will -- that'll address that issue in
17 short order, Your Honor.

18 THE COURT: I assumed that you would. Is there any
19 further business then, Mr. Galardi?

20 MR. GALARDI: No, Your Honor. We'll try to finish up
21 the order before we leave here today or have it submitted as
22 soon as possible.

23 THE COURT: All right. Thank you.

24 THE CLERK: All rise. The court is now adjourned.

25 * * * * *

1 C E R T I F I C A T I O N

2 We, Rita Bergen, Amy Rentner and Kathleen Betz, court
3 approved transcribers, certify that the foregoing is a correct
4 transcript from the official electronic sound recording of the
5 proceedings in the above-entitled matter, and to the best of
6 our ability.

7
8 /s/ Rita Bergen

9 RITA BERGEN

10

11 /s/ Amy Rentner

12 AMY RENTNER

13

14 /s/ Kathleen Betz

DATE: January 19, 2009

15 KATHLEEN BETZ

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